

Laurence M. Rosen, Esq. (SBN 219683)

THE ROSEN LAW FIRM, P.A.

355 South Grand Avenue, Suite 2450

Los Angeles, CA 90071

Telephone: (213) 785-2610

Facsimile: (213) 226-4684

Email: lrosen@rosenlegal.com

Jacob A. Goldberg, Esq.

Gonen Haklay, Esq.

101 Greenwood Avenue, Suite 440

Jenkintown, PA 19046

Telephone: (215) 600-2817

Facsimile: (212) 202-3827

Email: jgoldberg@rosenlegal.com

ghaklay@rosenlegal.com

Lead Counsel for Plaintiffs and the Class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

GREGORY WOCHOS, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

TESLA, INC., ELON R. MUSK, DEEPAK
AHUJA, and JASON WHEELER,

Defendants

Case No. 3:17-cv-05828-CRB

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR VIOLATION OF
THE FEDERAL SECURITIES LAWS**

JURY TRIAL DEMANDED

1 Lead Plaintiff Kurt Friedman and Named Plaintiff Uppili Srinivasan (collectively,
 2 “Plaintiffs”), individually and on behalf of all other persons similarly situated, by and through their
 3 attorneys, allege the following based upon personal knowledge as to Plaintiffs’ own acts, and
 4 information and belief as to all other matters, based upon, *inter alia*, the investigation conducted
 5 by and through Plaintiffs’ attorneys, which included, among other things, review and analysis of
 6 the Defendants’ public documents, conference calls and announcements made by Defendants
 7 Tesla, Inc. (“Tesla” or the “Company”), Elon R. Musk (“Musk”), and Deepak Ahuja (“Ahuja”),
 8 United States Securities and Exchange Commission (“SEC”) filings, wire and press releases
 9 published by and regarding Tesla, analysts’ reports and advisories about the Company, interviews
 10 with former employees of the Company, and information readily obtainable from public sources.
 11 Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein
 12 after a reasonable opportunity for discovery.

13 **NATURE OF THE ACTION**

14 1. This is a federal securities class action on behalf of a Class consisting of all persons
 15 other than Defendants who purchased or otherwise acquired common shares of Tesla between May
 16 3, 2017 and November 1, 2017, both dates inclusive (the “Class Period”). Plaintiffs seek to recover
 17 compensable damages caused by Defendants’ violations of the federal securities laws and to
 18 pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the
 19 “Exchange Act”) and Rule 10b-5 promulgated thereunder.

20 2. Despite firing public imagination with its niche, luxury electric vehicles, for Telsa
 21 to survive as an automobile manufacturer in the face of stiff competition from well-established,
 22 far better capitalized legacy automobile manufacturers, it must mass produce affordable electric
 23 cars.

24 3. By 2017, to much fanfare, Tesla launched its “affordable” Model 3, accumulating
 25 \$1,000 deposits from over 500,000 potential customers.

26 4. Beginning on May 3, 2017 and continuing throughout the Class Period, Defendants
 27 misrepresented to investors the then-current state of affairs with respect to whether the Company
 28 was “on track” to mass produce the Model 3 in 2017, and whether “progress” had been made

1 supporting Defendants' claims that 5,000 Model 3s per week would be produced before the end
2 of 2017. Defendants' statements were false.

3 5. Serious supply chain and production problems existed by the beginning of the Class
4 Period, including incomplete and/or non-existent automated production lines, causing unresolved
5 bottlenecks at both the Company's Fremont, California assembly line and at Tesla's
6 "Gigafactory," its purportedly state of the art, Reno, Nevada battery manufacturing facility. These
7 issues rendered mass producing the Model 3 in 2017 impossible. Defendants knowingly or
8 recklessly misrepresented the then-existing facts on the ground, and misrepresented the
9 Company's ability to mass produce the Model 3 by the end of 2017.

10 6. In 2016, riding the success of Tesla's niche, luxury Model S, Defendants announced
11 not only their intention to mass produce an "affordable" "Model 3" sedan, but touted the
12 Company's ability to do so in the near term. In 2016, Defendants boasted that production hurdles
13 they had overcome in producing the Models S and X would benefit their ramp-up to mass
14 production of the Model 3.

15 7. Tesla's long-term success in the auto industry hinged on its ability to mass produce
16 the Model 3. The stakes were existential. Far larger, well-established car companies such as
17 Chevrolet, Mercedes-Benz, Hyundai, Nissan, and Porsche, had already committed billions of
18 dollars to advance electric car technologies. Each already made millions more cars per year than
19 Tesla, and had the know-how and capacity to mass produce cars, regardless of the car's power
20 source. Further, producing the Model 3 cost Tesla billions of dollars, and the Company needed, as
21 quickly as possible, to recoup these expenditures through mass sales of the Model 3, or face a cash
22 crunch.

23 8. Investors and the public enthusiastically greeted Tesla's announcement that it
24 would mass produce an affordable electric vehicle. The costs and risks for Tesla of failing to mass
25 produce the Model 3 in a timely manner were high.

26 9. Defendant Musk announced that the Company would divert all income from sales
27 from Tesla's niche luxury vehicles, the Models S and X, to fund mass production of the Model 3.

28 10. Tesla has admitted that its capital expenditure on the Model 3 was \$4 *billion* in
2017, a year that ended with Tesla failing to mass produce the Model 3.

1 11. A March 12, 2018 Bloomberg article by author Tom Randall captured the
2 consensus about Tesla: the Model 3 production rate was “of existential importance” to Tesla.
3 Analysts concluded that unless Tesla met its promise to produce 5,000 Model 3s per week, it would
4 burn through its remaining cash in a year’s time and need to raise capital. The only way to begin
5 recouping these expenditures was to mass produce and sell Model 3s as quickly as possible.

6 12. Mass production of the Model 3 was dependent not only on designing, installing,
7 testing, and operating fully functional automated lines in Tesla’s Fremont, California facility, but
8 on achieving similar mass production success in Tesla’s Gigafactory, where Tesla planned to
9 produce its own batteries for the battery-powered Model 3, rather than outsourcing battery
10 production. Failure in either would materially postpone the Company’s mass production of the
11 Model 3. Time was of the essence.

12 13. Beginning in May of 2017, Defendants repeatedly stated that not only would Tesla
13 mass produce 5,000 Model 3s per week before the end of 2017, but that the actual present facts on
14 the ground – “progress” in automated production at both the Fremont and Gigafactory facilities –
15 showed that the Company was “on track” to mass produce Model 3s before the end of 2017. The
16 Company repeated such declarations throughout the Class Period.

17 14. In May 2017, when Defendants stated that the Company was “on track” to meet its
18 mass production goal, as production on a fully automated production line was supposed to be ready
19 to begin, and in August 2017, when production on a fully automated production line was supposed
20 to have already begun a month earlier and Model 3s were supposed to be coming off the line,
21 according to a number of former employees the Company had not yet finished building its
22 automated production lines in either Fremont or Nevada. Tesla was neither ramping up mass
23 production, nor “on track” to mass produce Model 3s at any time on or around the end of 2017.

24 15. In fact, all of Defendants’ statements regarding progress that the Company had
25 achieved in both Fremont and at the Gigafactory, and the statements they based on these
26 affirmative declarations of actual progress in Model 3 mass production, were false.

27 16. As early as mid-2016, Tesla executives responsible for planning and building the
28 Model 3 production line plainly told Defendant Musk and the other Defendants– in person,
providing specific support for their statements – that the Company could never mass produce the

1 Model 3 by the end of 2017. These Tesla executives told Musk and the other Defendants that it
2 was an impossible goal.

3 17. Former Employee (“FE”) 1 was Director of Manufacturing at Tesla’s Fremont plant
4 before the Class Period. At a May, 2016 meeting FE1 Told Musk directly that there was zero
5 chance that the plant would be able to produce 5,000 Model 3s per week by the end of 2017. FE1’s
6 conclusion was based on an actual plan:

- 7 • As of FE1’s departure in June 2016, Tesla did not yet even have a finalized design
8 for the Model 3, so Tesla could not release information so molds for body parts
9 could be built. Molds take from 9-12 months to make;
- 10 • Tesla had not yet begun ordering manufacturing equipment to be installed at the
11 Fremont plant. The timeline for functioning manufacturing equipment includes 1-
12 2 months to seek bids and negotiate contracts with suppliers, 6 months to
13 manufacture equipment, 6 months to install the equipment in the Fremont plant,
14 and 6 months to get the equipment working up to speed;
- 15 • Thus, the automated assembly line for the Model 3 could not possibly mass produce
16 cars in 2017. FE1 told Musk directly at the meeting that the *start* of manufacturing
17 would be at least 6 months later than July 2017, i.e., in 2018.¹

18 18. Tesla itself confirmed FE1’s production plan timeline in announcing the
19 requirements necessary to mass produce the Model 3 in 2017. Tesla verbalized an actual plan by
20 which certain aspects of planning, construction, and automation needed to be complete for the
21 Company to reach its mass production goal in 2017.

22 19. In a May 10, 2017 10-Q for the first quarter of 2017 (“first quarter 2017 10-Q”),
23 the Company told investors that, regarding activity in the first quarter of 2017, that “[w]e have
24 started the installation of Model 3 manufacturing equipment at the Fremont Factory and
25 Gigafactory 1, and we are on-track for start of Model 3 production in July 2017.”

26 20. Tesla thus told investors that it needed to have begun installing the automated lines
27 in Fremont and at the Gigafactory in the first quarter of 2017 in order to begin automated
28

¹ Musk told FE1 to look for new employment.

1 production in July, and that beginning automated production in July 2017 was necessary in order
2 to mass produce the Model 3 in 2017.

3 21. In fact, as witnesses attest, Tesla did not begin automated line installation in the
4 first quarter, and did not begin until late April or early May 2017. Defendants knew, therefore, that
5 actual automated mass production was *not* on schedule to begin in July, 2017. Given the
6 company's statements that beginning installation in the first quarter was necessary to complete
7 line installation (4-6 months) so the Company could begin automated production in July, and that
8 it would take 6 months to ramp up to mass production (July-December), the company knew that,
9 at a minimum, it needed to begin installing the automated lines at least 10-12 months before mass
10 production could be achieved.

11 22. When the Company spoke in May, 2017, it knew that installation of the automated
12 lines had not started early enough to mass produce the Model 3 in 2017, and that, **by its own**
13 **timeline**, mass production could not be achieved until well into 2018.

14 23. As attested to by former employees in both Fremont and at the Gigafactory, actual
15 progress was far more than two months behind what Tesla announced, falsely, it had already
16 accomplished.

17 24. Tesla perpetuated the lie that it was "on track" for mass production in 2017 during
18 the July 28, 2017 "handover" event, televised online, where Tesla "handed over" the first 30 Model
19 3s to buyers. During that event, Musk, directing the audience's attention to 50 shiny Model 3s,
20 stated that "there's actually a total of 50 production cars that we made this month...." "Production
21 cars" is a term of art in the automotive industry, a fact Musk, the CEO of a car-making company,
22 knew. A "production car" is produced by automation, such that all vehicles are identical, and
23 offered for sale to the public. Thus, Musk told the world that the 30 cars sold to buyers had been
24 produced on an automated line in July, and that the Company had achieved, and was "on track,"
25 with its July, 2017 automated production plan goal.

26 25. Tesla had **not**, however, produced the vehicles at the handover event on automated
27 lines. According to witnesses, every single Model 3, and every battery in those Model 3s, had been
28 built by hand, because there was no completed automated line in Fremont, nor would there be for
months. While the July 28, 2017 false statement led investors to believe Tesla was still "on-track"

1 for 2017 mass production, *by Tesla's own production schedule it knew that it would not mass*
2 *produce the Model 3 in 2017*, and until March 2018, at the earliest.

3 26. Defendants Musk and Ahuja, who visited the Fremont facility on a regular basis,
4 knew that the Model 3 production line was significantly behind the publicly announced schedule
5 and that it would never mass produce the Model 3 in 2017.

6 27. As Defendants claimed to be on track for mass production in 2017, the Fremont
7 facility was assembling Model 3s *by hand* in the "beta" or "pilot" shop," a facility to assemble
8 prototypes. The actual mass production line at Fremont was yet to be completed. Workers in the
9 pilot shop were not even able to build enough Model 3s to carry out the necessary testing on the
10 vehicles, and most Model 3 workers were being reassigned, or spending their days cleaning. It was
11 evident to anyone who visited the Fremont facility – and Musk himself visited the unbuilt
12 production line area every Wednesday, known internally as "Elon Day" – that the production line
13 was not yet built, that parts for the necessary robots were not present, and that construction workers
14 were spending most of their shifts sitting around with nothing to do. Multiple former employees
15 corroborate the fact that there was no fully functioning automated production line when Tesla was
16 telling the world that there was, and that the construction site where the line was being built was
17 clearly and visibly far from completion.

18 28. Further, in May 2017, when Defendant Musk stated specifically that, based on what
19 Tesla had already accomplished, the Company was "on track" to mass produce Model 3s in 2017,
20 the Gigafactory did not have sufficient fully functioning production lines, batteries were being
21 built by hand, and only a handful were being produced per week. As in Fremont, the facts on the
22 ground at the Gigafactory, which Musk himself visited, belied Musk's "on track" comment, as
23 well as all of the Company's subsequent statements during the Class Period.

24 29. Former employees state that there was no chance that the Gigafactory would
25 produce 5,000 batteries per week at any time in 2017, and mass production of Model 3s required
26 mass production of Model 3 batteries.

27 30. In fact, in February 2018, months after the end of the Class Period, Tesla admitted
28 that its ability to *ever* produce more than 2,500 Model 3 batteries per week at the Gigafactory
required the Company to disassemble a production line that was still in Germany, ship it to Nevada,

1 and reassemble it in Nevada. This gating requirement was omitted from the Company's numerous
2 statements to analysts and investors during the Class Period.

3 31. Multiple former employees, at both the Fremont facility and at the Gigafactory,
4 have confirmed what was obvious to anybody walking through those facilities both before and
5 during the Class Period. Tesla was never "on track" for mass production of the Model 3 before the
6 end of 2017, much less "on track" to produce 5,000 Model 3s per week before the end of 2017,
7 and the "progress" which Defendants claimed had occurred and supported their mass production
8 statements was illusory.

9 32. Without mass production lines and without batteries, it was impossible for Tesla to
10 mass produce the Model 3 in 2017, and Defendants knew Tesla had neither.

11 33. On October 2, 2017, in a press release detailing the Company's vehicle production
12 and deliveries for the third quarter of 2017, showing that the Company produced fewer than three
13 Model 3s per day during the quarter, Tesla cited "production bottlenecks" as the reason for its
14 failure to meet its production goals for its Model 3 sedan.

15 34. On October 6, 2017, the *Wall Street Journal* published an article, based in part on
16 eyewitness observations by workers at the Fremont plant, that very few Model 3s were being built,
17 and the Model 3s that were completed *were being built almost entirely by hand*, and not on a
18 finished production line. On this news, Tesla's stock dropped \$13.94, or 3.91%, to close at \$342.94
19 on October 9, 2017, damaging investors.

20 35. On November 1, 2017, Tesla itself finally acknowledged that mass production in
21 2017 would never happen, even as they refused to acknowledge all of their Model 3 production
22 problems, stating that the Gigafactory's lack of battery production had produced a bottleneck
23 preventing the Company from mass producing Model 3s. On this news, Tesla's stock dropped
24 \$21.82, or 6.8%, harming investors.

25 36. Throughout the Class Period, Defendants made false and misleading statements and
26 failed to disclose that: (i) contrary to Defendants' representations that the Company was prepared
27 for mass production of its Model 3 sedan by year-end 2017, in reality, the Company did not have
28 working production lines, and could not possibly build the production lines in the promised time-
frame, and was woefully unprepared to mass produce the Model 3 sedan and Model 3 battery as

1 claimed; (ii) as a result, Defendants' public statements about the state of affairs in Fremont and at
 2 the Gigafactory necessary to support mass production, and their statements about the scheduled
 3 date for commencement of mass production of the Model 3 were false and misleading at all
 4 relevant times.

5 37. When the true facts concerning mass production of the Model 3 were disclosed to
 6 the market, Tesla's share price dropped and Plaintiffs and the Class suffered damages,

7 **PARTIES**

8 38. Lead Plaintiff Kurt Friedman, as set forth in his Certification previously filed with
 9 the Court, which is incorporated herein, purchased common shares of Tesla at artificially inflated
 10 prices during the Class Period and was damaged upon the revelation of the alleged corrective
 11 disclosures.

12 39. Named Plaintiff Uppili Srinivasan purchased common shares of Tesla at artificially
 13 inflated prices during the Class Period and was damaged upon the revelation of the alleged
 14 corrective disclosures. The Certification of Uppili Srinivasan was previously filed with this Court
 15 as Exhibit A to the Amended Class Action Complaint (ECF No. 24).

16 40. Defendant Tesla is incorporated in Delaware, and the Company's principal
 17 executive offices are located at 3500 Deer Creek Road, Palo Alto, California 94070. Tesla's
 18 common stock trades on the NASDAQ under the ticker symbol "TSLA."

19 41. Defendant Elon R. Musk ("Musk") has served at all relevant times as the
 20 Company's Chief Executive Officer ("CEO"), Chairman, and "Product Architect."

21 42. Defendant Deepak Ahuja ("Ahuja") served as the Company's first Chief Financial
 22 Officer ("CFO") from April 2010 until 2015, returning to that position in March 2017. He remains
 23 CFO to this day.

24 43. Defendants Musk and Ahuja are sometimes referred to herein as the "Individual
 25 Defendants."

26 44. Each of the Individual Defendants:

- 27 (a) directly participated in the management of the Company;
- 28 (b) was directly involved in the day-to-day operations of the Company at the
 highest levels;

(c) was privy to confidential proprietary information concerning the Company and its business and operations;

(d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;

(e) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company;

(f) signed false certifications attesting to the material accuracy of documents filed with the SEC; and/or

(g) approved or ratified false and misleading statements in violation of the federal securities laws.

45. Tesla is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

46. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to the Company under *respondeat superior* and agency principles.

47. Defendant Tesla and the Individual Defendants are referred to herein, collectively, as the “Defendants.”

SUBSTANTIVE ALLEGATIONS

Tesla’s Origins and Business

48. Tesla was formed in 2003 by Martin Eberhard and Marc Tarpenning. Tesla is headquartered in Palo Alto.

49. By 2004, Tesla had developed a prototype electric car, the “Tzero,” which could go from zero to 60 mph in under 4 seconds. Tesla planned to commercially produce the Tzero under the model name “Roadster.” A prototype was finished by November 2004. Tesla floated a price tag of \$100,000 for the Roadster.

50. Elon Musk first became involved in Tesla’s Series A funding in 2004. By October 2008, Defendant Musk controlled Tesla, having forced out Eberhard and fired a quarter of Tesla’s employees. Musk became Tesla’s CEO, Chairman, and “Product Architect.”

1 51. To this day, Tesla is a niche automobile manufacturer, producing fewer than 6,400
2 cars per month in 2016, all luxury models with an MSRP starting at over \$74,000.

3 52. Tesla competes with established, well-capitalized automobile companies
4 worldwide, all of which are competing or beginning to compete in the electric automobile space.
5 Ford, General Motors, and Fiat-Chrysler dwarf Tesla's production. In 2016, Tesla delivered just
6 76,000 electric vehicles of all makes, while General Motors sold 10,000,000 cars and trucks, Ford
7 sold over 6,650,000 cars and trucks, and Fiat-Chrysler sold over 4,600,000 vehicles. Tesla's
8 revenue and profitability reflect its relatively few unit sales. On a net basis, in 2012 Tesla Motors
9 lost \$396 million on revenues of \$410 million, in 2013 Tesla lost \$74 million on revenues of \$2
10 billion, in 2014 Tesla lost \$294 million on revenues of \$3.2 billion, and in 2015 Tesla lost \$889
11 million on revenues of \$4 billion. By contrast, Tesla's competitors typically turn a profit, on much
12 higher revenues. For example, in 2015, General Motors earned net income of \$9.6 billion on
13 revenues of \$152.4 billion.

14 53. Tesla's competitors reach their sales figures and profits because they mass produce
15 and sell affordable vehicles. Among many others, Ford sells the Ford F-150, General Motors the
16 Silverado, and Fiat-Chrysler the RAM pickup. All of these vehicles start at about \$30,000, and
17 these companies have many other offerings at this and other attractive price levels.

18 54. Until 2016, Tesla produced only two luxury models, the Model S, a sedan, and the
19 Model X, a sport utility vehicle. According to Kelley Blue Book, in 2016, the average new car in
20 the United States sold for approximately \$33,000. The base MSRP for the Model S and Model X
21 was more than twice as much. As of December 31, 2015, the least expensive Model S and Model
22 X were approximately \$70,000. Premium configurations raised the price as high as double this
23 amount.

24 55. Tesla's luxury models are not mass-market cars, nor did Tesla ever intend to mass
25 produce them on a large scale.

26 56. Tesla acknowledges that the market for Models S and X is small. On a May 3, 2017
27 earnings conference call to discuss Tesla's first quarter 2017 earnings ("May 3, 2017 Conference
28 Call"), Defendant Musk admitted that the demand for luxury sedans is "like nothing – less than
1% of the market, 0.5%."

57. On the call, Musk also stated that annual sales of premium sedans in the United States were approximately 100,000, out of 17 million vehicles sold annually in the United States. Musk essentially acknowledged the existential importance of Tesla succeeding in mass producing the Model 3 in a short period of time.

Tesla Overpromises in Production Goals for Earlier Vehicles

58. Before the Model 3, Tesla only built three cars: the Roadster, the Model S, and the Model X. In announcing the Model 3, Tesla claimed it had learned from mistakes made during the ramp up of production of its luxury models. Those mistakes were numerous.

The Roadster

59. Tesla first designed and built the Roadster, a sports car. Lotus Cars (“Lotus”) actually built the Roadster using gliders (car bodies without an engine).

60. Tesla initially planned to begin commercial-level production of the Roadster by 2006. It did not achieve this goal.

61. In July 2006, Tesla took 127 preorders for Roadsters. Customers had to put down the full purchase price of \$100,000.² In Musk’s customer letters, Tesla promised delivery by the summer of 2007.³ This was just the first in a long line of Defendants’ false promises.

62. By January 2007, Lotus had delivered to Tesla, which was responsible for all aspects of the design of their first car, a list of 940 outstanding production problems. Of these, Tesla had resolved only 94.⁴

63. Tesla then announced that it would begin shipping Roadsters in the first quarter of 2008 – a promise that was reiterated as late as November 2007.

64. Tesla, however, did not *begin* production of Roadsters until March 2008, failing to deliver the first until the fall of 2008. By April 2009, the Company had delivered a total of 320 Roadsters.

² See “The Making of Tesla: Invention, Betrayal, and the Birth of the Roadster,” <http://www.businessinsider.com/tesla-the-origin-story-2014-10>.

³ *Id.*

⁴ *Id.*

65. By May 2009, however, Tesla recalled all 345 Roadsters built before April 22, 2009. Tesla told customers that without adjustment the driver could lose control of the car and crash.

66. In October 2010, Tesla recalled a further 439 Roadsters, or about one third of the Roadsters that had been sold to date, because of a potential fire hazard.

67. Ultimately, only 2,450 Roadsters were sold before Tesla completed its contract with Lotus in 2012. The contract was not renewed.

The Model S

68. In February 2007, Tesla announced that it would build a luxury sedan, later dubbed the Model S, initially setting the price at approximately \$45,000. Reservations cost a minimum down-payment of \$5,000.

69. As with production promises for the Roadster's, Tesla delayed the Model S's production date repeatedly, initially promising production by the fall of 2009,⁵ but pushing it back first to 2011 and then to 2012.⁶

70. Ultimately, Tesla began shipping the Model S in June 2012, with a base MSRP of about \$70,000.

71. Once again, production problems plagued the car's quality. In June 2013, Tesla recalled more than 1,000 Model Ss, because certain parts could cause a collapse of the rear seat back during a crash.

72. In January 2014, Tesla recalled 29,000 Model S units because chargers could overheat, creating fires.

73. In November 2015, again, Tesla recalled all 90,000 Model S units because their seat belts might not be correctly attached, increasing the risk of injury in case of an accident.

74. In April 2017, Tesla recalled another 53,000 Models S and Model X.

⁵https://web.archive.org/web/20100406182037/http://www.teslamotors.com/media/press_room.php?id=257

⁶ Tesla IPO Prospectus dated June 29, 2010, at 2.

1 ***The Model X***

2 75. The Model X was first unveiled online in 2012. A physical model was first
3 presented in January 2013. At the time, Tesla promised that production would begin by the end of
4 2013, less than 12 months away, with deliveries beginning in early 2014.

5 76. In early 2013, Tesla pushed back the start of production to late 2014. In November
6 2013, Tesla pushed back deliveries to the second quarter of 2015. In November 2014, Tesla pushed
7 production back again, to the third quarter of 2015. Deliveries finally started on September 29,
8 2015.

9 77. On an earnings conference call on May 4, 2016 to discuss Tesla's first quarter 2016
10 results ("May 4, 2016 Conference Call"), Musk told investors that the Model X is "I think
11 unquestionably the most difficult car to manufacture in the world."

12 78. Tesla has admitted the many mistakes it made with the Model X. Musk stated
13 during the May 3, 2017 Conference Call that the "[Model] X became kind of like a technology
14 bandwagon of every cool thing you can imagine all at once. It's like everything all at once. That
15 was a terrible strategy." Musk blamed "hubris and real overconfidence."

16 **Announcement of the Model 3 – Tesla States this Time Production Will be Different**

17 79. During a February 15, 2012, earnings conference call, Defendant Musk announced
18 that the next Tesla car after the Model X would be an affordable mass market vehicle Tesla dubbed
19 the "Gen 3." During a November 5, 2014, earnings conference call, the Company affirmed that a
20 car like the Model 3 "has been the goal of the company all along."

21 80. In 2016, over four years after first announcing its intention to design and mass
22 produce an affordable, mass market electric vehicle, Tesla disclosed concrete plans to market and
23 sell the Gen 3, which it now dubbed the "Model 3." Designed to be affordably priced starting at
24 \$35,000, the Model 3 was Tesla's first car intended to be mass produced and appeal to a mass
25 market. The Roadster, Model S, and Model X were luxury, niche vehicles never intended for mass
26 production.

27 81. On the May 3, 2017 Conference Call, Musk boasted that the demand for the Model
28 3 at \$35,000 was between thirty and seventy times the demand for the Model S. Within one day

1 of Tesla beginning to accept \$1,000 refundable deposits to reserve a Model 3, 198,000 people had
2 paid the deposit.

3 82. From the time of Defendants' 2016 disclosure of plans to produce the Model 3,
4 Defendants told investors that they had learned from their previous mistakes, and that Model 3
5 production would be different.

6 83. Defendants downplayed their previous failures to meet production deadlines with
7 their earlier cars in touting their Model 3 production capabilities.

8 84. On February 10, 2016, during Tesla's fourth quarter 2015 earnings conference call
9 ("February 10, 2016 Conference Call"), Musk told investors that while the Model S was essentially
10 a "proof-of-concept" car that Tesla had designed and produced to convince the world that electric
11 cars could be attractive, Tesla designed the Model 3 "for ease of manufacturing."

12 85. According to Defendants, the Model 3 was "quite a bit less complex to manufacture
13 than the Model S." According to Defendant Musk, manufacturing costs for the Model 3 would be
14 only 50% of the manufacturing costs of the Model S, due to decreased complexity and economies
15 of scale and general design improvement.

16 86. During the May 4, 2016 Conference Call, Tesla told investors it anticipated Model
17 3 sales of approximately 300,000-400,000 in 2018, increasing materially thereafter. At those
18 numbers, Tesla would produce and deliver between 5,769-7,692 Model 3s *per week* in 2018, so
19 Defendants were announcing to the market at this early date that they intended to mass produce
20 the Model 3 before the end of 2017.⁷ On that same call, Defendants represented to investors that
21 Tesla had a volume target of close to *one million* vehicles in 2020 – the vast majority of which
22 would be Model 3s. Musk represented that Tesla was "highly confident that [the Model 3] can be
23 made profitably."

24 87. During the August 3, 2016 earnings conference call ("August 3, 2016 Conference
25 Call"), Musk repeatedly stated that the Model 3 was Tesla's primary focus, stating, e.g., that "the
26 Model 3 [is] our focus," and "the focus really is on Model 3."
27
28

⁷ By contrast, Tesla's announced target for 2018 production of Models S and X on the May 4, 2016 Conference Call, combined, was 100,000-150,000.

1 88. According to Defendants, the Company would eliminate the production problems
2 that plagued manufacture of Models S and X, and streamline the manufacture and delivery of the
3 Model 3. During a February 22, 2017 Conference Call to discuss Tesla's fourth quarter 2016
4 earnings ("February 22, 2017 Conference Call"), Defendant Musk admitted that the relatively
5 small numbers of Models S and X that Tesla produced left Tesla unable to attract premier parts
6 suppliers to make parts for and dedicate their best employees to producing those vehicles. Musk
7 admitted that the parts were manufactured by "the worst team on second-tier suppliers." By
8 contrast, Tesla bragged that because of the Model 3 volume Defendants anticipated, the Company
9 was able to get "the best team on first-tier suppliers," which Musk stated made "really a big
10 difference."

11 89. As Tesla President of Global Sales & Service Jon McNeill touted on the February
12 22, 2017 Conference Call, Tesla claimed to have learned from its experience with the Model X:

13 I might just add that we really learned a lot of lessons especially from the
14 difficult Model X ramp, and that is something that's in our recent memory.
15 We fought through it and succeeded, but I think in the design the Model 3
16 and the systems and the lines that produce it, many of those learnings have
17 been incorporated from the beginning. So if the amount of complexity and
18 the operations to assemble the car is dramatically reduced, the amount of
19 operations that involve some sort of assembly craft, where there is more
20 judgment of the operator, is dramatically reduced, almost eliminated. And
21 a lot of these things that we could identify directly as the bottlenecks that
22 hurt us on the X ramp, we have been able to target specifically and reduce
23 or eliminate. So that has -- though painful, it was a helpful experience for
24 us to get ready for Model 3.

25 90. Musk agreed, stating during the May 3, 2017 Conference Call, on the first day of
26 the Class Period, that the Model 3 would be a radically simpler car to produce than Models S or
27 X.:
28

1 We've gone to great pains with the Model 3 to design it for manufacturing
 2 and to not have all sorts of bells and whistles and special features that, like,
 3 for example, with X.⁸

4 ****

5 So with Model 3 it's the opposite. We've designed it to be easy to make.
 6 We've got I think a much better supply chain in place where we've got the
 7 A team from the A suppliers. We didn't have that for the Model X or the S.
 8 And as far as we know, there are no issues.

9 91. Further, Tesla intended to automate far more of the Model 3 production than for its
 10 previous vehicles. According to Jeffrey B. Straubel, Tesla's Chief Technology Officer, during the
 11 May 3, 2017 Conference Call, the Model 3 is "vastly more automated" than Models S or X, perhaps
 12 "3 to 4x more automated." Defendant Musk added that the production speed for the Model 3 will
 13 be "at or probably slightly better" than the next best car in the world.

14 The Gigafactory

15 92. Tesla's ability to achieve mass production of the Model 3 was always dependent
 16 on a fully automated, Model 3 dedicated production line in Fremont, California.

17 93. In addition, for the Model 3 Tesla determined to manufacture its own batteries at a
 18 Reno, Nevada facility called Gigafactory 1 ("Gigafactory").⁹ Citing a battery shortage as the main
 19 reason Tesla had, until that time, been unable to market its vehicles as aggressively as they
 20 otherwise would have, in 2013, the Company announced plans to manufacture its own battery
 21 production facility, the Gigafactory.¹⁰

22
 23
 24 ⁸ During the February 22, 2017 Conference Call, Musk cited as examples of "bells and whistles"
 25 on Models S and X that would not be in the Model 3 design "self-presenting door handles," a
 26 feature where the driver-side door handle automatically sticks out when the owner approaches,
 27 and "buckling doors," where the entire door opens as the owner approaches.

28 ⁹ The Gigafactory 1 ("Gigafactory") is a lithium-ion battery factory. The numerical "1"
 designation is indicative of Tesla's plans to build multiple Gigafactories in the United States,
 Europe, and China. See <http://www.thedrive.com/tech/9819/tesla-may-announce-four-new-gigafactories-this-year>.

¹⁰ See <https://www.techspot.com/news/54600-tesla-wants-to-build-a-massive-battery-supply-facility-to-curb-shortages.html>.

94. Tesla's ability to mass produce the Model 3 depended on its ability to manufacture enough quality batteries at the Gigafactory. During the July 28, 2017 handover event with Tesla employees, Musk stated that "the production rate will move as fast as the slowest... component in the whole mix. Then on top of that we have the Gigafactory..."¹¹ During the Class Period, The Company produced all batteries for the Model 3 at the Gigafactory.¹²

95. Defendants disclosed that they had conceived the Gigafactory as part of a "vertical integration" strategy. Rather than managing a system of producers who would feed in to Tesla, Defendants intended Tesla to control and manage every aspect of production. Defendants' vertical integration strategy is radically different than the prevailing "lean" production philosophy the auto industry has employed for the past 50 years.¹³ With lean production, suppliers deliver components to each team's work station just-in-time for assembly, encouraging resourceful problem-solving and discouraging the practice – common in vertical integration – of relying on a surplus of spare parts.¹⁴

96. Defendants developed Tesla's vertical integration strategy because Tesla is one of the few automobile manufacturers whose entire line is electric, and none of its previous models was mass produced. Supplies of batteries and other electric vehicle-specific parts was limited, and Tesla was unable to wait for a supply chain to develop to service its demand.¹⁵

97. Despite that necessity, Tesla's plan to produce its own batteries adds an additional, vital manufacturing challenge its competitors do not face.¹⁶

¹¹ Though Musk told employees that the next six months would be "production hell," he did not waver from a statement the Model 3 would be mass produced around the end of 2017.

¹² According to Tesla, the name Gigafactory comes from the word "Giga," the unit of measurement representing "billions," given that the factory's planned annual battery production capacity is 35 gigawatt-hours (GWh), with one GWh being the equivalent of generating (or consuming) 1 billion watts for one hour. *See* <https://www.tesla.com/gigafactory>.

¹³ *See* <http://www.businessinsider.com/tesla-has-to-overcome-a-major-problem-for-its-massive-new-gigafactory-to-succeed-2016-7>.

¹⁴ *See* <https://www.economist.com/node/14299730>.

¹⁵ *See* <http://www.businessinsider.com/tesla-has-to-overcome-a-major-problem-for-its-massive-new-gigafactory-to-succeed-2016-7>.

¹⁶ *Id.*

98. Tesla signed an official partnership agreement with Panasonic regarding the Gigafactory in July 2014. Panasonic was already previously supplying Tesla with millions of battery cells. Tesla broke ground on construction of the Gigafactory around the same time.

99. Tesla has stated that it is building the Gigafactory in phases so it can manufacture immediately inside completed sections, while continuing to expand.¹⁷ When the Gigafactory opened in July 2016, a little more than two years after construction began, construction was approximately 14% complete. Currently, the Gigafactory has a footprint of more than 1.9 million square feet, with more than 4.9 million square feet of operational space across several floors. When finished, the Gigafactory is projected to be the biggest building, by footprint, on the planet.¹⁸

100. The Model 3 battery was designed differently than the batteries for Models S and X to accommodate the Model 3's lower price point, with different numbers and configurations of modules and battery cells. The batteries for Models S and X are not produced at the Gigafactory,¹⁹ and Tesla has confirmed that Model 3 batteries will not be produced on lines that produce Model S and X batteries, nor will the Company change the design of the Models S and X batteries to incorporate the Model 3's lithium-ion cell.²⁰

101. Further, batteries of different sizes will be produced for the two versions of the Model 3 (220 mile range and 310 mile range).²¹

102. At the end of the Class Period, Panasonic CEO Kazuhiro Tsuga confirmed that Model 3 battery pack production was *not* automated during the Class Period.²²

¹⁷ Currently, the Gigafactory is less than thirty percent complete.

¹⁸ See <https://www.tesla.com/gigafactory>.

¹⁹ See "Tesla Batteries 101 – Production Capacity, Uses, Chemistry, & Future Plans," <https://cleantechnica.com/2017/12/02/tesla-batteries-101-production-capacity-uses-chemistry-future-plans/>.

²⁰ See "Dissecting the Tesla Model 3's 2170 lithium ion battery cell, what's inside?" <https://www.teslarati.com/inside-tesla-model-3-2170-lithium-ion-battery/>.

²¹ See "Tesla Model 3: Performance, specs, and news," <https://www.digitaltrends.com/cars/tesla-model-3-performance-specs-news-rumors/>.

²² See <https://arstechnica.com/cars/2017/10/production-problems-at-teslapanasonic-gigafactory-may-be-at-an-end/>.

Failure to Mass Produce the Model 3 Presented an Existential Dilemma for Tesla

103. Mass producing the Model 3 before the end of 2017 was critical to Tesla. One March 12, 2018 Bloomberg article stated that “[t]he Model 3 production rate is of existential importance to Tesla.”²³ These pressures motivated Defendants to mislead investors during the Class Period to preserve Tesla’s stock price and its ability to raise money to fund operations.²⁴

104. The *Wall Street Journal* stated that mass production of the Model 3 was “a make-or-break period in which Tesla must boost production of the Model 3 or possibly face severe financial consequences.”²⁵ Tesla’s commitment to the Model 3 caused it to spend \$4 billion dollars for Model 3 production in 2017, alone. Tesla had to spend cash to ramp up mass production of the Model 3, which it depended upon to increase cash flow and allow the Company to continue its development as an electric vehicle company.

105. If Tesla did not mass produce the Model 3, it would fail to bring in the cash necessary to continue funding the Model 3.

106. During the July 28, 2017 “handover” event, Defendant Musk told the assembled employees that revenues from sales of the Models S and X were being diverted to the Model 3 project (“the money that we make with the S and X all goes into building the Model 3”). In a First Quarter 2017 Update filed by Tesla on May 3, 2017, Defendants stated that “we expect that year-to-date expenditures will be slightly over \$2 billion by the start of Model 3 production. In the Second Quarter 2017 Update filed by Tesla on August 2, 2017, the company noted that for the

²³ <http://bloomberg.com/news/articles/2018-03-12/tesla-s-production-problems-spawn-a-legion-of-model-3-stalkers>.

²⁴ On August 7, 2017, Bruce Clark at Moody’s stated that Tesla’s credit “rating could be downgraded if there are major production or quality problems for the Model 3, if consumer demand erodes to the degree that the company cannot maintain its 5,000 per week production target through 2018, or if the level of Model 3 reservations supported by \$1,000 deposits fall from the current level of 455,000 to below 350,000.”

²⁵ <https://www.wsj.com/articles/teslas-make-or-break-moment-is-fast-approaching-1521111603?mod=e2tw>.

Model 3 “capital expenditures should be about \$2 billion during the second half of 2017.”²⁶ Tesla has burned through about \$10 billion in cash since 2010.²⁷

107. During an August 2, 2017 earnings conference call (“August 2, 2017 Conference Call”), in a colloquy with JPMorgan Securities LLC analyst Ryan Brinkman, the Company reiterated the importance to 2017 results of cash from mass production of the Model 3. Defendants attempted to put investors at ease about the threat of a cash crunch from a failure to mass produce the Model 3 in 2017:

Ryan J. Brinkman - JP Morgan Chase & Co, Research Division - Senior Equity Research Analyst: In just thinking about your liquidity position, while you're operating with more cash than you historically have, \$3 billion, *I see you're also guiding to \$2 billion CapEx in the back half and you previously said \$1 billion of gross cash is as low as you're comfortable operating at.* So you guide to positive cash from operations the back half, presumably on Model 3 ramp in 4Q. But if it's only a little positive, then I guess you would be close to your targeted cash level. *So the question is can you help us size up how positive do you expect the cash from operations to be in the back half?* And if that level of cash from operations plus whatever remains available to draw on your asset-backed line, if that's sufficient cushion for you relative to your \$1 billion target or whether it might make sense to do another equity raise?

Elon R. Musk - Tesla, Inc. - Co-Founder, Chairman, CEO and Product Architect: Yes. Deepak, do you want to...

Deepak Ahuja - Tesla, Inc. – CFO: Yes, sure, sure, Ryan. *So we expect our operating cash flows to be significantly better in the second half compared to the first half. At their highest level, scaling generates cash.*

²⁶ Tesla repeated this statement in a 10-Q filed on August 4, 2017, stating “we expect to invest approximately \$2.0 billion in capital expenditures during the second half of 2017.”

²⁷<https://www.wsj.com/articles/teslas-make-or-break-moment-is-fast-approaching-1521111603?mod=e2tw>.

Elon R. Musk - Tesla, Inc. - Co-Founder, Chairman, CEO and Product Architect: *Yes, it certainly does.*

108. Later in that same August 2, 2017 Conference Call, Musk elaborated, admitting that:

This is just because of *Model 3 is fundamentally negative gross margin in the very beginning*, because you've got a gigantic machine producing -- that's meant for 5,000 vehicles a week and it's producing a few hundred vehicles a week.²⁸

109. During that same call, Musk emphasized the importance of mass production to Tesla's short term cash position, and to avoid a future cash crunch. Tesla had set a 25% margin for Model 3 sales, and Musk admitted that until Tesla sold 5,000 Model 3s per week, and then for months after, that margin goal would not be met.²⁹

110. UBS analyst Colin Langan has stated that until Tesla mass produces 5,000 Model 3s per month, it will continue burning through cash.³⁰ Tesla had only \$3.4 billion cash in hand at the end of 2017, meaning that burning through \$4 billion without mass production had created a cash crunch, and failure to mass produce the Model 3 in 2018 would require Tesla to raise funds through debt or equity markets, which would be made more difficult if investors lost confidence in the Company's ability to quickly mass produce Model 3s and the stock price fell.³¹

111. Tesla's existential dilemma is also due to the fact that it is quickly losing any advantage it once had for being first on the market, as far more experienced competitors are investing billions of dollars to compete with Tesla, and some have actually beat Tesla to market

²⁸ Musk made this comment during the third quarter of 2017. At no point in that quarter did Tesla produce "a few hundred vehicles a week." Model 3 production averaged less than 3 vehicles per day during the third quarter of 2017.

²⁹ During the call, Musk further reassured that the investments made are "taking us to 5,000 and beyond [in Model 3 production]."

³⁰ <https://www.wsj.com/articles/teslas-make-or-break-moment-is-fast-approaching-1521111603?mod=e2tw>.

³¹ *Id.*

1 with affordable electric vehicles. These facts further underline the need for Tesla to mass produce
2 the Model 3 quickly.

3 112. Daimler AG, owner of Mercedes-Benz, announced in the third quarter of 2017 that
4 it would invest \$1 billion to produce electric vehicles in the United States.³² Porsche is investing
5 \$7.4 billion in electric cars, developing and selling not only electric vehicles but “new
6 technologies, charging infrastructure and smart mobility.”³³ General Motors announced in 2017
7 that it will sell two fully electric models in 2018, and at least 18 more by 2012.³⁴ Further, GM is
8 establishing significant footprints in countries Tesla has hardly reached, with plans to launch ten
9 electric vehicles in China by 2020.³⁵ Hyundai has plans to sell the Kona, an electric vehicle with
10 a 292 mile range, which is designed to “battle the Chevy Bolt EV, Nissan Leaf and Tesla Model
11 3.”³⁶ In July 2017, Volvo announced that as of 2019, *every car Volvo produces* will have a version
12 that runs on electric power.³⁷ Toyota has announced similar plans for all its vehicles by 2025.³⁸

13 113. Competitors already market and mass produce electric vehicles, selling a higher
14 number of affordable electric vehicles than Tesla. GM sells its Chevy Bolt EV for \$33,000. Chevy
15 has sold over 130,000 of its Volt model, and over 25,000 Chevy Bolts. Chevy sold nine times as
16 many Bolts as Tesla sold Model 3s in the final quarter of 2017.³⁹ Nissan sold approximately 50,000
17 of its electric Leaf vehicle in 2016. Privately owned Chinese manufacturer BYD (“Build Your
18 Dreams”), which also makes battery cells, is partially owned by Warren Buffett, and has a joint
19 venture with Mercedes-Benz, sold more electric cars in 2015, 2016, and 2017 than any company,
20
21

22 ³² [https://www.bloomberg.com/news/articles/2017-09-21/mercedes-plots-tesla-attack-with-1-](https://www.bloomberg.com/news/articles/2017-09-21/mercedes-plots-tesla-attack-with-1-billion-u-s-electric-push)
23 [billion-u-s-electric-push](https://www.bloomberg.com/news/articles/2017-09-21/mercedes-plots-tesla-attack-with-1-billion-u-s-electric-push).

24 ³³ [https://www.theverge.com/2018/2/5/16975752/porsche-electric-cars-investment-smart-](https://www.theverge.com/2018/2/5/16975752/porsche-electric-cars-investment-smart-mobility)
25 [mobility](https://www.theverge.com/2018/2/5/16975752/porsche-electric-cars-investment-smart-mobility).

26 ³⁴ <https://www.wired.com/story/general-motors-electric-cars-plan-gm/>.

27 ³⁵ *Id.*

28 ³⁶ <https://www.cnet.com/roadshow/news/hyundai-kona-electric-ev-new-york-auto-show-suv/>.

³⁷ <https://www.wired.com/story/volvos-electric-car-plan/>.

³⁸ <https://electrek.co/2017/12/18/toyota-electric-car-plans/>.

³⁹ [https://seekingalpha.com/article/4135148-december-sales-general-motors-chevy-bolt-ev-](https://seekingalpha.com/article/4135148-december-sales-general-motors-chevy-bolt-ev-outsold-tesla-model-3-3-1)
outsold-tesla-model-3-3-1.

1 including Tesla.⁴⁰ Internationally, as of July 2017, i.e., during the Class Period, more than 30 fully
 2 electric vehicles were available on the international market.⁴¹

3 114. With all of these competitive pressures bearing down on Defendants Musk and
 4 Tesla, during the Class Period, Defendants repeatedly told investors and analysts that actual
 5 already-existing progress, i.e., facts on the ground, supported that Tesla could and would mass
 6 produce the Model 3 before the end of 2017. Each of Defendants' statements about Tesla's actual
 7 progress towards mass production of the Model 3 was knowingly or recklessly false.

8 115. On May 3, 2017, after the close of the market, Tesla filed with the SEC its "Tesla
 9 First Quarter 2017 Update" as Exhibit 99.1 to an 8-K. Defendants Musk and Ahuja signed the
 10 Update. Directly referencing actual facts on the ground with respect to completion of the
 11 automated line meant to produce the Model 3, i.e., progress that could be seen, the Company stated
 12 that:

13 *[P]reparations at our production facilities are on track* to support the ramp
 14 of Model 3 production to 5,000 vehicles per week at some point in 2017, and
 15 to 10,000 vehicles per week at some point in 2018.⁴²

16 116. Later that same day, during the May 3, 2017 Conference Call, Defendant Musk
 17 engaged in a colloquy with Deutsche Bank AG analyst Rod Avraham Lache. Again, Musk stated
 18 that *based on what had been achieved to date*, nothing would stop mass production of the Model
 19 3 in 2017:

20 Lache: A couple remaining questions. Just one is, since the Model 3 is maybe
 21 2 or 3 months away, could you just give us a sense of what some of the most
 22 critical outstanding items are that are going to gate the commercial launch
 23 timing? And now that there are actual physical test vehicles on the road, are
 24 there any significant changes happening?

25 Musk: Well, actually it seems to be -- *we're not really seeing any significant*
 26

27 ⁴⁰ [https://www.greencarreports.com/news/1115398_chinas-byd-tops-global-electric-car-](https://www.greencarreports.com/news/1115398_chinas-byd-tops-global-electric-car-production-for-third-year-in-a-row)
 28 [production-for-third-year-in-a-row.](https://www.greencarreports.com/news/1115398_chinas-byd-tops-global-electric-car-production-for-third-year-in-a-row)

⁴¹ <https://www.wired.com/story/volvos-electric-car-plan/>.

⁴² Emphasis added unless otherwise noted.

1 *change that needs to occur* with Model 3. So it's coming in as expected, as
 2 the design continuation has predicted, it's getting pretty close to the bull's-eye,
 3 and *I'm not aware of anything that would affect our prior statements about*
 4 *volume target.*

5 Lache: So there's nothing outstanding vis-à-vis tooling, deliveries or things
 6 like that, that you're still viewing as a critical item with some uncertainty?

7 Musk: There's plenty of things with uncertainty, but *I don't know anything*
 8 *that would prevent us from starting firstly in July, and exceeding 5,000*
 9 *units per week by the end of the year.* There may be some cost up there, I just
 10 don't know of what that is today.

11 117. In fact, as described in detail below, Musk was personally aware of existing facts
 12 that prevented Model 3 mass production in 2017.

13 118. Just a week later, on May 10, 2017, the Company struck again in the first quarter
 14 2017 10-Q, reassuring analysts and investors that progress on the ground was going as planned for
 15 mass production in 2017:

16 In the first quarter of 2016, we unveiled Model 3, a lower priced sedan
 17 designed for the mass market. Model 3 vehicle development is nearly
 18 complete as we approach the start of initial production in July of this year.
 19 Release candidate vehicles, built using production-intent tooling and
 20 processes, are being tested to assess fit and finish, to support vehicle software
 21 development and to ensure a smooth and predictable homologation process.
 22 Road testing is also underway to refine driving dynamics and ensure vehicle
 23 durability. *Simultaneously, preparations at our production facilities are*
 24 *progressing to support the ramp of Model 3 production to 5,000 vehicles per*
 25 *week at some point in 2017* and to 10,000 vehicles per week at some point in
 26 2018. We are working closely with all Model 3 suppliers to ensure their
 27 readiness ahead of the start of production.

28 119. In the same May 10, 2017 first quarter 2017 10-Q, reporting on developments that
 had occurred in the first quarter of 2017, the Company told investors that “[i]n the first quarter of

1 2016, we announced our target to increase overall vehicle production level to 500,000 vehicles in
2 2018. *We have started the installation of Model 3 manufacturing equipment at the Fremont*
3 *Factory and Gigafactory 1, and we are on-track for start of Model 3 production in July 2017.*”

4 120. The first quarter 2017 10-Q also specifically stated that things were already going
5 well at the Gigafactory to support mass production of the Model 3 in 2017, with the Company
6 writing: *Although we continue to remain on track with our progress at Gigafactory 1...*

7 121. At no point in May 2017 did Musk or the other Defendants even hint that
8 preparations for mass production of the Model 3 by the end of 2017 were lagging behind their own
9 production plan, or otherwise of concern.

10 122. Analysts believed Defendants. In a May 4, 2017 analyst report from Oppenheimer,
11 analyst Colin Rusch noted that with respect to the Model 3, “progress on manufacturing to date is
12 performing ahead of our expectations.”

13 123. Similarly, a Deutsche Bank analyst stated on May 4, 2017, without reservation, that
14 “Tesla remains confident in the launch timing of Model 3, with production expected to begin in
15 July. They still expect to reach a production run rate of 5k/week at some point in 2017...”

16 124. At the July 28, 2017 “handover event,” televised online, where Tesla “handed over”
17 the first 30 Model 3s to buyers, Musk assured investors (falsely) that automated production of the
18 Model 3 had begun, stating “there’s actually a total of 50 production cars that we made this
19 month...” Following the July 28, 2017 “handover” event, analysts again expressed confidence in
20 Defendants’ statements that already-existing progress meant Tesla was on-target for mass
21 production in 2017. In a July 30, 2017 KeyBanc Capital Markets analyst report, analyst Brad
22 Erickson even reprinted a chart Musk projected to employees on July 28, 2017, building on Musk’s
23 assertion that automated production began on schedule in July 2017, and showing production
24 reaching 5,000 Model 3s per week in 2017, or after a 6-month ramp-up.

25 125. In fact, the 50 Model 3s were not “production cars,” a term of art in the automotive
26 industry. By using this phrase, Musk was conveying to analysts and investors that the cars had
27 been produced on automated lines, when every part of those Model 3s had actually been built by
28 hand, and Tesla was not even close to automated production of the Model 3.

1 126. When the Company spoke to the public again, in August 2017, Defendants
2 continued telling the public that progress that had already occurred in Fremont and at the
3 Gigafactory supported Model 3 mass production before the end of the year, statements augmented
4 by the fact that in August the Company stated that it was already producing Model 3s at sufficient
5 rates.

6 127. On August 2, 2017, Tesla filed with the SEC “Tesla Second Quarter 2017 Update”
7 as Exhibit 99.1 to an 8-K. Defendants Musk and Ahuja signed the Update. Directly referencing
8 actual facts on the ground with respect to completion of the automated line meant to produce the
9 Model 3, a line which was supposedly already producing cars, the Company stated, based on
10 current production line advancement, that:

11 *Based on our preparedness at this time*, we are confident we can produce
12 just over 1,500 vehicles in Q3, and achieve a run rate of 5,000 vehicles per
13 week by the end of 2017.

14 128. Later that same day, during the August 2, 2017 Conference Call, Defendant Musk,
15 in prepared remarks, again referenced production achievements that had progressed as planned,
16 stating that:

17 *And we remain – we believe on track to achieve a 5,000 unit week by the*
18 *end of this year.*

19 So, I would certainly urge people not to get too caught up in what exactly falls
20 within the exact calendar boundaries of a quarter, one quarter over the next,
21 because when you have an exponentially growing production ramp, slight
22 changes of a few weeks here or there can appear to have dramatic changes,
23 but that is simply because of the arbitrary nature of when a quarter ends.

24

25 And then we – with Model 3, even more vertically integrated. I think people
26 should really not have any concerns that we will reach that outcome [10,000
27 cars per week by the end of 2018] from a production rate.

28 129. Again during the August 2, 2017 Conference Call, in prepared remarks, Defendant
Musk told investors that events that had already transpired at the Gigafactory, which by this time

1 was supposed to be producing batteries on a production line to meet the stated mass production
 2 goal, were in-line with the stated expectations, stating: “[a]nd then batteries – also making great
 3 *progress on the battery front.*”

4 130. Analysts again credited the Company’s statements about progress as they related to
 5 meeting the mass production goal. Deutsche Bank Market Research, in an August 2, 2017 report
 6 entitled “Tesla’s Outlook Bullish vs. Expectations,” specifically noted that Tesla had stated that
 7 already-completed progress drove their confidence in 2017 mass production, writing that “Tesla’s
 8 management *sounded very confident in their level of preparedness to achieve production targets.*
 9 The analyst continued that “the combination of higher margins and a faster production ramp would
 10 have significant positive implications for earnings and cash flow.”

11 131. Analyst Guggenheim, in an August 3, 2017 report recommending that investors
 12 “buy” Tesla stock, were also convinced that progress on the ground was already occurring on pace,
 13 writing “Tesla’s economic model remains all about Model 3.... Model 3 began production in July,
 14 hitting a target we do not believe most thought would even be met just 3-6 months ago....”

15 **Defendants Made Clear their Production Plan for Mass Producing the Model 3 in 2017**

16 132. In May, 2016, FE1, drawing on his experience, told Musk directly that there was
 17 zero chance that the plant would be able to produce 5,000 Model 3s per week by the end of 2017.
 18 Since, as of FE1’s departure in June 2016, Tesla did not yet even have a finalized design for the
 19 Model 3, Tesla could not release information so molds for body parts could be built. Molds take
 20 from 9-12 months to make. Tesla had not yet begun ordering manufacturing equipment to be
 21 installed at the Fremont plant. The timeline for functioning manufacturing equipment includes 1-
 22 2 months to seek bids and negotiate contracts with suppliers, 6 months to manufacture equipment,
 23 6 months to install the equipment in the Fremont plant, and 6 months to get the equipment working
 24 up to speed. Thus, the automated assembly line for the Model 3 could not possibly mass produce
 25 cars in 2017. FE1 also told Musk that there was not enough room in the Fremont facility for
 26 equipment to produce 5,000 cars per week, and that expansion would be necessary. For his
 27 honesty, Musk told FE1 to leave the company.

28 133. In fact, Tesla’s public statements made clear that they agreed with virtually all of
 FE1’s production plan, and that it was *their* production plan.

134. In the first quarter 2017 10-Q, Defendants stated that in the first quarter of 2017 “[w]e have started the installation of Model 3 manufacturing equipment at the Fremont Factory and Gigafactory 1, and we are on-track for start of Model 3 production in July 2017.”

135. Defendants thus largely, and publicly, corroborated FE1’s production plan:

- 4-6 months to install equipment, clear from Defendants’ statements that installation starting in Q1 2017 was necessary to begin production in July 2017;
- Further, 6 months from the beginning of automated production, in July 2017, to ramp up to automated mass production, by the end of December 2017;
- This schedule is virtually identical to what FE1 told Musk in mid-2016.

136. Finally, Defendants were belatedly forced to accept as true what Musk rejected, that the Fremont facility was not large enough to house production equipment to mass produce the Model 3. In June 2018, Tesla built a large open-air tent with a third Model 3 production line. Musk, admitting that FE1 was correct that the Fremont main facility was inadequate for mass production, tweeted “[n]eeded another general assembly line to reach 5k/week Model 3 production. A new building was impossible, so we built a giant tent in 2 weeks.”⁴³

137. With a publicly stated production plan, the veracity of Tesla’s “on track” statements can only be understood, simply, to be false. If installation began in the first quarter and was complete by July, and if automated production began in July, then the Company would have been “on track.” Reality, however, which was as obvious to Musk and Defendants as it was to the workers in Fremont and in the Gigafactory, showed that none of the publicly stated production plan points had been achieved, or even come close to being achieved, and Defendants knew they were not “on track” for 2017 mass production.

Eyewitness Statements from Tesla’s Fremont and Gigafactory Employees Show that Defendants Knew that they Would Not Mass Produce the Model 3 in 2017

138. Tesla’s own former employees confirm what was obvious to the naked eye. Installation of production equipment did not begin in the first quarter of 2017. Automated production did not begin in July 2017, and, indeed, did not begin for a long time afterwards.

⁴³ <https://electrek.co/2018/06/19/tesla-model-3-assembly-line-inside-tent-elon-musk/>.

1 Defendant Musk's own executives told Musk personally, as far back as mid-2016, that there was
2 zero chance of mass producing the Model 3 in 2017. Former Employee ("FE") 1 was Director of
3 Manufacturing at Tesla's Fremont plant from December 2012 to June 2016. He reported directly
4 to Josh Ensign, Vice President of Manufacturing, and FE1 also reported directly to Musk.

5 139. FE1 was responsible for the planning for manufacturing capabilities, as well as for
6 production for the Model 3. FE1's area of concentration was plastics and coating, known as the
7 "accordion shop" because it is the part of the production process in-between building the body of
8 the car and assembling the rest of the car. FE1 was required to know what was happening in both
9 the processes upstream and downstream from the "accordion shop."

10 140. Sometime in late April or early May of 2016, FE1 participated in a meeting with
11 Musk, CFO Jason Wheeler,⁴⁴ and the Vice President of Engineering. FE1 stated that during that
12 meeting, *he told Musk directly* that there was zero chance that the plant would be able to produce
13 5,000 Model 3s per week by the end of 2017.

14 141. FE1 stated that there were many reasons why Tesla would never be able to produce
15 5,000 Model 3s per week by the end of 2017, all known as of April or May of 2016. As of FE1's
16 departure in June 2016, Tesla did not yet even have a finalized design for the Model 3, so Tesla
17 could not release information so molds for body parts could be built. Molds take from 9-12 months
18 to make.

19 142. FE1 further stated that Tesla had not yet begun ordering manufacturing equipment
20 to be installed at the Fremont plant. The timeline for functioning manufacturing equipment
21 includes 1-2 months to seek bids and negotiate contracts with suppliers, 6 months to manufacture
22 equipment, 6 months to install the equipment in the Fremont plant, and 6 months to get the
23 equipment working up to speed. Thus, the automated assembly line for the Model 3 could not
24 possibly even be mass producing cars in 2017.

25 143. FE1 told Musk directly at the meeting that the *start* of manufacturing would be at
26 least 6 months later than July 2017, *i.e.*, in 2018. FE1 further told Musk that Tesla needed to expand
27 the area needed at the Fremont plant to prepare the body of the Model 3. Musk rejected this idea.
28

⁴⁴ Wheeler both followed and preceded Defendant Ahuja as CFO.

1 144. At the conclusion of the April or May 2016 meeting, Musk told FE1 that he should
2 look for new employment. FE1 resigned from Tesla because of the false timeline for the Model 3.
3 FE1 stated that it was obvious to everyone in the factory that Tesla would not be producing 5,000
4 cars per week by the end of 2017.

5 145. FE1 stated that Ensign, the Vice President of Manufacturing, also told Musk
6 directly that the Company would never be able to meet Musk's unrealistic timeline for production
7 of 5,000 Model 3s per week by the end of 2017. FE1 stated that Musk then forced Ensign out of
8 the Company. Ensign left Tesla in May 2016.

9 146. After his resignation, FE1 has continued to speak with former colleagues at Tesla
10 in positions giving them access to the information FE1 now reports. FE1 learned recently that
11 Musk is now expanding the manufacturing area for the Model 3, as well as taking other steps FE1
12 recommended, and Musk rejected, during FE1's tenure at Tesla.

13 147. FE1 stated that as Musk knew the announced production timeline was false, he was
14 not telling the truth to the public when he stated that current conditions meant that 5,000 Model 3s
15 per week would be manufactured by the end of 2017.

16 148. FE2 was a Senior Project Engineer in Material Flow Engineering for the Model 3
17 at Tesla's Fremont plant from April 2014 to June 2016. FE2 reported to Govin Ranganathan,
18 Engineering Manager, Material Flow Engineering, and to Kevin Vliet, Director, Material Flow
19 Engineering. Vliet reported to Greg Reichow, Vice President of Production between June 2013
20 and July 2016. Reichow reported directly to Elon Musk.

21 149. FE2's job was to conceptualize, plan and discuss solutions with suppliers for parts
22 of the production line for the Model 3. FE2 focused on areas of the production line for assembly,
23 receiving the battery packs, and distribution of car parts into and out of the warehouse.

24 150. FE2 and her team dealt with numerous suppliers who would be building and/or
25 installing the equipment, automation and robots that would comprise parts of the Model 3
26 production line. FE2 stated that as of June 2016, FE2 and her team had not yet even finalized their
27 plans for the production line, nor settled on all of the suppliers for the equipment and/or solutions.

28 151. FE2 stated that Tesla's Model 3-related suppliers, including Ilseman, Intelligrated,
and Thematic, told Tesla that the timelines Tesla wanted them to meet were "impossible," and

1 could not be met. FE2 stated that in conversations with colleagues for other sections of the as-yet
2 unbuilt production line, those colleagues told FE2 that suppliers they were dealing with were
3 telling them the exact same thing.

4 152. When FE2 left Tesla in June 2016, construction of the production line for the Model
5 3 had not yet begun. FE2 described the production concept for most of the different sections of the
6 line as more “conceptual” than practical through the end of FE2’s tenure at Tesla.

7 153. When FE2 left Tesla in June 2016, only one company had a completed contract
8 with Tesla to supply equipment for the production line.

9 154. FE2 stated that everyone, including FE2, knew that the Company would not be
10 producing 5,000 Model 3s per week by the end of 2017. FE2 stated that it would take 18-24 months
11 to construct the system and get it up and running and ready for production to begin. Suppliers were
12 telling FE2 that lead times for obtaining materials for the equipment, and then building the
13 equipment, was at least six months. FE2 stated that delivering, installing, and programming the
14 line in the Fremont facility would take at least an additional six to twelve months. Another several
15 months would be needed to work the bugs out of the production line.

16 155. Further, FE2 stated that Tesla would be dealing with hundreds, or thousands, of
17 vendors, each with a different role in building the assembly line. Suppliers were telling FE2 and
18 Tesla that having to share the space with other workers carrying out different tasks would
19 complicate their ability to complete their work timely, and that as workers with different
20 responsibilities would be working in the same space at the same time, the process would take even
21 longer.⁴⁵

22 156. FE2 reported to her supervisors what suppliers were saying about their lead times
23 for the equipment and their inability to meet Tesla’s timelines. FE2 stated that Tesla was aware of
24 these timelines and difficulties. FE2 stated that based on FE2’s and Tesla’s experience in building
25 the production line for the Models S and X, Defendants understood how difficult and time-
26 consuming the process would be.

27
28 ⁴⁵ On July 28, 2017, at the “handover” event, Musk confirmed FE2’s statement about the number of parts and vendors, stating that “there are 10,000 unique parts in a Model 3, and these are coming from all over the world.”

1 157. When FE2 left Tesla in June 2016, FE2's team had not yet finalized plans for
2 building the production line, or settled on all of the suppliers for equipment and/or solutions. Based
3 on conversations FE2 had after FE2's departure from Tesla with former colleagues who were still
4 employed by Tesla and in positions to know the information FE2 reports, the plans for the
5 production line were still not finalized as of July or August of 2016.

6 158. By 2017, just before and during the Class Period, the detailed warnings from FE1
7 and FE2, some spoken directly to Musk himself, were proving to be true. Even as Defendants
8 bragged, during the Class Period, about progress that had already been achieved on Tesla's most
9 important project, the reality in Fremont and at the Gigafactory was far more grim, and visible to
10 anybody visiting the facilities.

11 159. FE3 worked at Tesla from August 2012 to Oct. 18, 2017, or nearly through the end
12 of the Class Period. FE3 began employment as a production associate in Fremont, was promoted
13 to Team Leader, and in October 2015 was promoted to Production Supervisor - General Assembly
14 for Tesla's luxury Models S and X at the Fremont factory. As a Production Supervisor, FE3
15 reported to Corey Shaw, Assistant Manager. Shaw reported to Ventura Diaz, Unit Leader, who
16 reported to Mario Panera, Production Manager - General Assembly at Tesla. FE3 stated that the
17 Model 3 production line was constructed in the same building as Models S and X.

18 160. From FE3's vantage point working as a Production Supervisor, every day, FE3
19 could observe the section of the uncompleted Model 3 assembly line where Tesla constructed the
20 chassis, including the battery pack, suspension, and brake hubs. During the entirety of his
21 employment, until October 18, 2017, FE3 *never saw a single Model 3 being constructed on the*
22 *assembly line.*

23 161. FE3 stated that the only personnel on the Model 3 assembly line were construction
24 and engineering personnel, responsible for designing and building the line.

25 162. FE3 stated that the Model 3 production line was not yet operational when he left
26 the company in mid-October 2017. FE3 noted that had cars been produced on the Model 3
27 assembly line, FE3 would not only have seen the automated production line actually working, but
28 would also have seen some of the vehicles in what was called the "yard," an area where cars

1 needing a part or system tweaked, e.g., an air leak in a window seal, were placed after being
2 removed from a working assembly line.

3 163. As of his departure in October 2017, FE3 stated that the Model 3's "body in white
4 line," where the vehicle's body was welded together, ***was not operational***. That section of the
5 factory was still fenced off when FE3 left.

6 164. An October 6, 2017 *Wall Street Journal* article confirms FE3's observations and
7 knowledge about the "body in white line." In the October 6, 2017 article, entitled "Behind Tesla's
8 Production Delays: Parts of Model 3 were Being Made by Hand,"⁴⁶ the Journal reported that it
9 interviewed multiple workers who stated that:

10 equipment for the so-called body-in-white line for the Model 3, where the
11 car body's sheet metal is welded together, wasn't installed until by around
12 September. They guessed at least another month of work remained to
13 calibrate the tools.

14 165. FE3 stated that it was common knowledge at the Fremont facility that construction
15 and assembly of the automated production line for the Model 3, whose assembly only started
16 towards the very end of FE3's tenure at Tesla, was delayed, and not yet completed.

17 166. FE3 further stated that around September 2017, the Company began terminating
18 many employees working on the Model 3 production team. FE3 attributed these terminations to
19 the production delays, as since the production line was not operational, the Company did not need
20 large numbers of production employees. FE3 estimated that the company terminated the jobs of
21 about 200 employees in the period shortly before FE3 ceased working at Tesla.⁴⁷

22 167. FE3 also reported a startling fact, not evident from any of Defendants' statements:
23 during the Class Period, Model 3s were not being made at all on an automated line. Rather, they
24

25 ⁴⁶ <https://www.wsj.com/articles/behind-teslas-production-delays-parts-of-model-3-were-being-made-by-hand-1507321057>

26 ⁴⁷ FE3's recollection about mass firings is correct. Fortune.com reported that in early October,
27 2017, Tesla fired 400-700 workers, including in Fremont. See "Tesla Fires Hundreds of Workers
28 After Their Annual Performance Review, <http://fortune.com/2017/10/13/tesla-fires-employees/>. Many of the fired workers alleged that they were laid off, unrelated to performance reviews. See "Tesla Employees Detail how they Were Fired, Claim Dismissals Were Not Performance Related," <https://www.cnbc.com/2017/10/17/tesla-firings-former-and-current-employees-allege-layoffs.html>.

1 were produced in Fremont's "beta" or "pilot" shop, which is where prototypes and test versions of
2 the Model 3 were constructed.

3 168. Multiple former Tesla employees confirm this claim. FE4 was a Manufacturing
4 Engineer working on production of the Model 3 from March 2017 to June 2017. FE4 worked in
5 the pilot shop, and reported to Richard Castro, supervisor of the pilot shop. The pilot shop is located
6 in an extension of the main building in Fremont, separated from the main building by a wall and
7 door. The pilot shop was where Model 3 prototypes, or test cars, were built.

8 169. FE4 was a "process owner" of an area of assembly of the Model 3. The process
9 owner was the team leader during a particular shift.

10 170. FE7 also worked in the pilot shop, from February 2017 through the end of June
11 2017, during the same shift as FE4. FE7 was hired through a temp agency, and was responsible
12 for welding together the outer layers of the Model 3. FE7 reported to supervisor Richard Castro,
13 who reported to Mike Lazaro.

14 171. FE4's team was responsible for the first part of the assembly process of the Model
15 3, installing all of the fasteners, including screws, bolts, and nuts. As "process owner" other team
16 members came to FE4 for parts, questions, and to report problems. FE4 reported to a manager on
17 behalf of the team, and spoke with the leader of the next shift at the end of FE4's shift.

18 172. When FE4 left in June 2017, after Defendants had already told investors that
19 advancement in the Fremont facility and at the Gigafactory showed that the Company was "on
20 track" to mass produce the Model 3 in 2017, FE4 states that ***all Model 3s were being constructed***
21 ***in the pilot shop, mostly by hand***. A total of 120-130 Model 3s had been built. The pilot shop
22 typically completed 3-5 skeletons of cars per day, with a target of 15-20 per week. The finishing
23 touches were completed in another area, and that work was also done mostly by hand, and not on
24 the automated production line that was still under construction. FE4 stated that the number of
25 production associates in the pilot shop far exceeded the personnel needed to produce the small
26 number of Model 3s actually produced. Production associates sometimes spent their entire shifts
27 cleaning, and some were loaned to the Models S and X production lines.

28 173. FE7 confirmed that through June 2017, Model 3s were still being built by hand in
the pilot shop. FE7 further confirmed that in FE7's last month of employment, the pilot shop was

1 producing 10-15 Model 3s per week. Those vehicles were used for testing, displays and
2 presentations.

3 174. As a process owner, FE4 regularly entered the main factory area where the Model
4 3 automated line was under construction, in order to obtain parts from inventory. FE4 further
5 passed the area where the automated production line was being constructed each day in order to
6 get to her work area. FE4 was able to observe the construction progress on the automated line on
7 a daily basis.

8 175. During FE4's tenure at Tesla, which overlapped with the Class Period, the fully
9 automated line for producing Model 3s was *never* in operation, as it was still under construction.
10 FE4 said that the delays were openly visible to anyone in the factory who saw the production line.

11 176. FE4 stated that construction of the permanent line was significantly delayed. FE4
12 spoke with the workers constructing the automated line, who stated that the line was not even close
13 to being completed, and that it would not be completed in 2017, and perhaps not until as late as
14 May 2018. Tesla was not providing the workers constructing the line with instructions in an
15 efficient manner. These workers often had no work to do, as it was assigned to them on a day-to-
16 day basis, and no work to do after the mid-point of their shifts.

17 177. Mauricio Gonzalez, the engineering technician who oversaw FE4's team, told FE4
18 during an informal conversation that the new projection for completion of the automated line was
19 in 2018. FE4 also heard pilot shop supervisors state that the projection was a 2018 finish date,
20 including during an informal conversation with supervisor Castro. FE4 further named Mike Lazaro
21 and Curtis Hutchins as managers who were contemporaneously aware of delays of the Model 3
22 production.

23 178. FE7 stated that the engineers building the production line spoke with his managers,
24 including Castro and Lazaro, about the progress of the automated line. FE7 stated that it was
25 commonly known by even the lowest ranked employees that the production line was in the very
26 early stages of construction, as construction had not begun until April or May 2017, and was
27 nowhere near completion.

28 179. FE5 was a Robot Programmer on the Model 3 production line at Tesla's Fremont
plant from June or July 2017 to September 2017. FE5 worked for Chicago Robot Works ("CRW"),

1 which was a subcontractor to Comau, an Italian multinational specializing in industrial automation.
2 Tesla hired Comau to install the automated machinery and robotics for the Model 3 production in
3 Fremont. FE5 reported directly to a Comau supervisor.

4 180. CRW and Comau were already installing the automated robotics for the Model 3
5 production line at the Fremont plant when FE5 arrived in June or July 2017. Installation was not
6 yet complete.

7 181. FE5's job was to pre-program and program robots on the "body shop" section of
8 the production line, where Model 3 body parts would be welded together. FE5 worked amongst,
9 but not with, Tesla engineers. FE5 estimated that the body shop production line alone had about
10 100 robots.

11 182. When FE5 left Tesla's facility in early September 2017, the body shop for the
12 Model 3 was not yet fully automated, nor was it near completion. It was unclear how much more
13 time would be necessary to achieve full automation of the body shop, though based on his
14 knowledge of the requirements, FE5 estimated that the full production line was approximately
15 45% finished.

16 183. FE5 stated that some robot parts for which Tesla was awaiting delivery when he
17 first arrived at the facility had still not arrived when he left in September 2017. FE5 understands
18 that the parts supplier for the robots being installed in the Fremont facility was itself waiting for
19 parts to be delivered to it.

20 184. FE5 did not know where Model 3s were being built since the full production line
21 was not near completion. However, FE5 stated that Model 3s were **not** being built in the building
22 where the automated production line for the Model 3 was being installed.

23 185. FE6 worked on the Processing and Manufacturing teams for the Model 3 at Tesla's
24 Fremont plant from May 2016 to January 2017. FE6 reported to Shawn Hensen, Manager of Body
25 Engineering, and to Matt Higgins, Manager of Body Advanced Engineering.

26 186. Beginning in July 2016, FE6 worked in the pilot shop helping to build the rear
27 underbody of the car. FE6 said that between mid-2016 and early 2017 the team in the pilot shop
28 was building Model 3 test cars, called the C-Sample (previous versions were called the B-Sample),
that would be put through various manufacturing and functional tests as part of finalizing the

1 Model 3 design for mass production. FE6 thus confirms FE1's statement that as of July 2016, Tesla
2 did not yet even have a finalized design for mass production of the Model 3.

3 187. FE6 stated that in or around September 2016, the manufacturing team was told to
4 make twenty C-Samples that would be sent for crash tests, tests for installation and functionality
5 of the battery pack and tests of paint coating, among others. The goal of making 20 C-samples was
6 later reduced to making just 3 C-Samples, because the stamping department, which supplied many
7 of the parts, only produced enough parts to make that many.

8 188. FE6 stated that most large car manufacturers outsource the stamping to mass
9 production plants in China, but Tesla was doing it in-house. The Company, therefore, faced big
10 delays whenever a machine went down or it could not produce sufficient quantities of what was
11 needed. FE6 stated that Tesla used data from B-samples in lieu of the necessary testing to finalize
12 the Model 3 design.

13 189. FE6 stated that during FE6's last several months at Tesla, everyone at the Fremont
14 plant, including Musk, was aware that the Company would not be able to produce 5,000 Model 3s
15 a week by the end of 2017, and that the timeline was unrealistic.

16 190. FE6 recalled a conversation with William Zochodne, a senior manufacturing
17 engineer who attended meetings with Musk. Zochodne expressed that the deadlines for production
18 were unrealistic, and wondered aloud when Musk would change the timeline and admit that
19 producing 5,000 Model 3s per week in 2017 would not happen.

20 191. The lack of progress in completing automated production lines, necessary for
21 achieving mass production of the Model 3, was not a surprise to Defendant Musk, as Musk
22 regularly visited the Fremont facility.

23 192. FE3 stated that Musk visited the Fremont factory every Wednesday, and that
24 Wednesdays were referred to internally as "Elon Day." FE3 stated that in advance of Musk's visits,
25 Unit Leaders sent group texts alerting employees that Musk would be visiting, and included
26 reminders/instructions such as "make sure your areas are clean. The boss is here." FE3 saw Musk
27 in the factory meeting room on numerous occasions.

1 193. FE3 understood that after it was clear that Model 3 production and the production
2 line itself were delayed, Musk convened a meeting where Musk yelled at Model 3 managers about
3 the delays.

4 194. FE2 confirmed that Musk visited the Fremont plant once a week, on Wednesdays,
5 to speak with lead employees about the Models S, X and 3. FE2 stated that FE2's superiors were
6 informed of what the suppliers told FE2. FE2 understood that those concerns were raised with
7 Musk by superiors during Musk's visits to the Fremont facility.

8 195. FE6's desk was in close proximity to employee meeting rooms, and FE6 saw Musk
9 regularly, for meetings with plant directors from engineering, manufacturing and other
10 departments to discuss, among other things, Comau's budget for installing the production line
11 robots and the timeline for when the line could be up and running.

12 196. Despite Musk's statement to investors during the Class Period that battery
13 production at the Gigafactory was making "great progress," the production problems in Nevada
14 were at least as dire as those in Fremont, and it was plain to anybody visiting the Nevada facility
15 that Tesla would not mass produce batteries for the Model 3 in 2017.

16 197. FE8 was a Quality Technician who trained Line Inspectors at the Gigafactory in
17 Nevada, from January of 2014 through September 2017, through most of the Class Period. FE8
18 reported to a manager, Guillermo Gutierrez, and to a supervisor, Anthony D'Amico.

19 198. FE8 stated that each Model 3 battery pack consisted of four modules, each of which
20 was approximately 5-6 feet long. Each module contained approximately 20,000 batteries that were
21 glued together. Workers were required to inspect alignment of the batteries and measure and test
22 the coolant tubes.

23 199. FE8 stated that each Model 3 module was vertically aligned in order for the pack
24 to be placed in the bottom of the vehicle. The battery pack was designed to run the length of the
25 car, from the rear wheels to the front wheels. The battery pack consisted of a clamshell on top, and
26 other wiring and bonding. A bandolier, produced at the end of the assembly line, secured the
27 batteries in the enclosure.

28 200. FE8 stated that the batteries and modules were required to pass several inspection
stages, and that there was a high failure rate for the modules produced for the Model 3 during

1 FE8's entire three year tenure at the Gigafactory. Each module was inspected at a sub-assembly
2 location and inspectors signed off on the inspection and recorded the serial numbers for each
3 module. If the height of even a single battery was incorrect during the sealing process, the entire
4 module would be discarded. FE8 stated that high failure rates and module issues persisted during
5 all of FE8's employment. Modules that did not pass inspection were sent to the "Non-Conforming
6 Material" area of the Gigafactory facility.

7 201. FE8 further stated that production downtime was common, often lasting 7-8 hours,
8 due mainly to a lack of parts, inadequate machine programming, and automation problems.

9 202. FE9 was a Process Technician for Tesla at the Gigafactory location in Nevada from
10 March of 2017 until October of 2017, assigned to the Model 3 production team. FE9 observed
11 workers on and off the assembly line during both manual and automated assembly.

12 203. When FE9 began working in March 2017, *all* battery module assembly was manual,
13 a process FE9 described as "messy." Automated production lines were being built during most of
14 FE9's tenure at Tesla, and partial automated battery production, which did not encompass all of
15 the production process, did not even begin until September 2017.

16 204. At the end of the Class Period, the CEO of Tesla's Gigafactory partner, Panasonic,
17 confirmed FE9's statement that battery production to that point was *not* automated.⁴⁸

18 205. According to FE9, the Gigafactory was plagued by problems related to producing
19 usable modules, and the first battery module was completed long past the deadline when the Model
20 3 was supposed to have been launched. The process required applying adhesive at a specific ratio,
21 which if not done properly caused the batteries to "fall off." Parts and spaces between parts were
22 small, making correct module completion challenging. FE9 stated that prior to automated
23 production, human error resulted in poorly produced modules "all the time," with workers rushing
24 products through the line, assuming problems "would fix [themselves]," which they did not.

25 206. FE8 stated that further delays were caused by Panasonic, Tesla's partner in the
26 Nevada Gigafactory, because Panasonic batteries contained metal fibers, and Panasonic employees
27

28

⁴⁸ See <https://arstechnica.com/cars/2017/10/production-problems-at-teslapanasonic-gigafactory-may-be-at-an-end/>.

1 were required to check every pallet of modules to confirm there were no sealing problems with the
2 metal fibers.

3 207. FE9 also recalled that the partial automated production, once it finally began in
4 September 2017, was plagued with production problems. Many of the specifications were
5 incorrect, the automated lines did not work properly, and specific production issues persisted,
6 including insufficient quantities of adhesive. Further delays and production problems were a result
7 of inexperienced employees who did not receive adequate training.

8 208. FE8 corroborated this account of automation-related malfunctions, stating that
9 some problems were caused by incorrect programming, in Germany, of German-sourced
10 machines. FE8 stated that machines were constantly being re-programmed.

11 209. FE8 stated that Gigafactory workers were brought in from Intellisource and other
12 temp agencies, leading to high turnover and a negative effect on production. FE8 recalled busloads
13 of approximately 27-30 workers arriving at the Gigafactory from temp agencies, and that number
14 being weeded out to 3-4 total workers in just two to three weeks.

15 210. During FE9's tenure, which lasted almost to the end of the Class Period, the
16 Gigafactory produced no more than *two battery packs, at most, per day*, sufficient for two cars.
17 Realistically, it took a full day – comprised of two shifts – to produce a single battery pack, and,
18 even then, it was not a "customer saleable pack," i.e., a pack that passed inspection and was ready
19 to be installed in the Model 3.

20 211. The only "customer saleable pack" was completed in October 2017, shortly before
21 FE9 left Tesla. A company-wide email was sent congratulating the engineers and production
22 workers for their hard work.

23 212. FE10 was a Production Associate at the Gigafactory from October 2017 to January
24 2018. FE10 reported to Production Supervisor Timothy Mosher.

25 213. FE10 worked on a battery production line applying glue to the windows of the
26 battery. The battery packs that were assembled on FE10's line arrived in an elevator. The person
27 next to FE10 scanned the battery into the computer system, and the battery was cleaned at the end
28 of the line.

1 214. FE10 described frequent production stoppage due to equipment breakdown, and
2 line workers being “starved for work.” Malfunctioning equipment included facility elevators, and
3 production machines. A shutdown of any part of the line process stopped work on the entire line.

4 215. FE11 worked as a Materials Handler at the Gigafactory from December 2016 to
5 January 2018. FE11 reported to Material Flow Manager Scott Dowler.

6 216. FE11 confirmed that very few Model 3 batteries were completed during the Class
7 Period. FE11 recalled 14 production lines, each with 5-6 Tesla employees. Panasonic employees
8 would deliver batteries to the Tesla employees, who assembled each battery pack.

9 217. FE11 stated that it took 1-2 weeks for each production line at the Gigafactory to
10 produce one (1) finished battery, so no more than 14 finished Model 3 batteries were completed
11 every 1-2 weeks.

12 218. FE11 stated that it was not uncommon to receive faulty modules, which were sent
13 to technicians to fix. Problems ranged from leakage, to parts of incorrect size, to broken or
14 malfunctioning parts. It took approximately a full week to resolve any issues that arose on the line.

15 219. FE11 confirmed FE8’s statement that Tesla brought in temp workers from staffing
16 agencies, and that Tesla did a poor job training the workers.

17 220. FE12 was Operations Planning Manager at the Gigafactory from May 2017 to June
18 2018. FE12 began working at Tesla after the May, 2017 SEC filings.

19 221. FE12’s job was to oversee planning for production operations that made or
20 assembled Model 3 components at the Gigafactory. His job required him to coordinate with
21 departments involved in different aspects of Gigafactory production, allowing him insight into
22 overall production operations in the Gigafactory. FE12 regularly spoke with managers in material
23 supplies, operations, new product integration (in both Fremont and at the Gigafactory), and Tesla’s
24 liaison with Panasonic.

25 222. FE12 reported to Anoop Thulaseedas, Gigafactory Supply Chain Planning.
26 Thulaseedas reported to Adam Plumpton, Logistics Director, who reported to Sascha Zahnd, Vice
27 President of Global Supply Chain.
28

1 223. Upon beginning employment, FE12 had conversations with Flora Rooker, Senior
2 Material Planner, who told FE12 that the Gigafactory had been behind schedule continuously for
3 a year.

4 224. Within one month of employment at Tesla, FE12 knew that Tesla would not be able
5 to produce 5,000 Model 3s per week by the end of 2017, and that the Gigafactory specifically
6 would not be able to produce enough batteries to meet that goal. Tesla's "internal production
7 equipment wasn't capable of doing 5,000" batteries by the end of 2017, according to FE12.

8 225. Beginning in June 2017, FE12 wrote production capacity forecasts, each of which
9 concluded that the Gigafactory would not produce enough "car sets" for 5,000 Model 3s per week
10 in 2017. A "car set" is comprised of a drive unit and a battery pack, the two components
11 manufactured at the Gigafactory. The battery packs were assembled using battery cells supplied
12 by Panasonic.

13 226. In the summer of 2017, not long after he began working at Tesla, FE12 told
14 Plumpton and Thulaseedas that the Gigafactory was not capable of meeting the stated 2017 goal.

15 227. By July 2017, a "massive [parts] inventory" had built up because actual production
16 was behind schedule. FE12 requested, but was denied permission, to cut back on deliveries.
17 Instead, he was instructed to rent extra storage spaces to store supplies for months.

18 228. FE12 cited several reasons for the Gigafactory's failure to meet production goals:
19 suppliers delivering equipment late, problems installing equipment, difficulty getting equipment
20 to run, poor equipment design, difficulty getting equipment and lines qualified, and a shortage of
21 engineers and manpower to fix these issues.

22 229. These issues resulted in "constant delays" in building production lines and
23 producing usable parts.

24 230. FE12 believes that the conversion from manual to automated production at the
25 Gigafactory did not occur until the end of the third quarter of 2017. However, automated
26 production was so cumbersome and beset by problems that in the fourth quarter of 2017 or the first
27 quarter of 2018, Tesla switched back to manual production because it improved production
28 numbers.

231. Panasonic supplied the battery cells for the Model 3's battery packs. Panasonic was well behind schedule in building its part of the Gigafactory, according to FE12. The construction delays meant that battery cell production would not be sufficient to meet Tesla's stated goal in 2017, which, again, FE12 realized shortly after beginning his employment at Tesla.

232. In July, 2017, FE12 recalls that even as it was obvious that the December goal was not going to be achieved, and was not reachable for at least three months into 2018, Musk "was still saying 5,000, 5,000, 5,000." FE12 stated that, at a minimum, Defendant Musk was "willful[ly] ignorant" of the already existing present facts that meant that Tesla would be unable to produce 5,000 Model 3s per week.

233. As the automated line was being installed, the lines producing inverters and drive units immediately suffered from "tons of issues," forcing the lines to be shut down, and low-quality modules to be scrapped. Further, MOSFETS (metal oxide semiconductor field-effect transistors) necessary for inverters were in short supply, and large quantities were scrapped due to quality issues.

234. As with Musk's weekly visits to the Fremont facility, where the lack of a functioning automated production line was obvious to anybody present, so too did Defendant Musk personally observe the complete lack of mass production of Model 3 batteries at the Gigafactory in Nevada during the Class Period.

235. Musk bragged to all of his Twitter followers that during at least part of the Class Period, he was *sleeping in the Gigafactory*, as that allowed him to be more efficient and avoid driving 30 minutes to Reno and the nearest hotel. Musk posted a photo to Instagram of himself and others drinking whiskey around a fire on the roof of the Gigafactory, singing Johnny Cash songs.⁴⁹

236. Even if fully automated, the Gigafactory could never have produced 5,000 Model 3 batteries per week during 2017, a fact Defendants admitted long after the end of the Class Period. In an 8-K filed on February 9, 2018, Tesla had to "clarify" a statement made by Defendant Musk

⁴⁹ See "Elon Musk is Sleeping in the Tesla Factory Again," <https://www.gearbrain.com/elon-musk-sleep-tesla-factory-2502241359.html>.

1 during a conference call two days earlier, on February 7, 2018, concerning battery production
2 capacity at the Gigafactory *in February 2018*:

3
4 Tesla, Inc. is clarifying the following statement made by Elon Musk, Tesla's
5 Chief Executive Officer, during Tesla's fourth quarter and full year 2017
6 financial results conference call held on February 7, 2018:

7 *"[We] expect the new automated lines to arrive next month in March. And*
8 *then it's already working in Germany so that's going to be disassembled,*
9 *brought out to the Gigafactory and reassembled and then go into operation*
10 *at the Gigafactory. It's not a question whether it works or not. It's just a*
11 *question of disassembly, transport and reassembly. So we expect to alleviate*
12 *that constraint. With alleviating that constraint, that's what gets us to the*
13 *roughly 2,000 to 2,500 unit per week production rate."*

14
15 The "2,000 to 2,500" units per week cited in this comment refers solely to the
16 capacity of the additional automated battery module manufacturing
17 equipment that is currently located in Germany, and not to Tesla's total Model
18 3 production run rate or to the capacity of the automated battery module
19 equipment that is already present at Gigafactory 1. Tesla's ability to meet its
20 target of 2,500 per week by end of Q1 2018 is not dependent on the additional
21 equipment that is currently located in Germany, as that equipment is expected
22 to start ramping production during Q2 2018. With respect to battery module
23 production, Tesla's ability to meet its target of 2,500 per week by end of Q1
24 2018 is dependent only on the equipment that is already present at Gigafactory
25 1, as well as the incremental capacity that is currently being added through
26 the semi-automated lines that were also discussed during the conference call.
27 (emphasis in original).
28

237. Thus, more than three months after the end of the Class Period, Defendants admitted that production equipment required to even start to think about producing 5,000 Model 3 batteries in a week *was still in Germany in February 2018*.

MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS ISSUED
DURING THE CLASS PERIOD

238. The Class Period begins on May 3, 2017. On that date, after the close of the market, Tesla filed with the SEC its “Tesla First Quarter 2017 Update” as Exhibit 99.1 to an 8-K. The document was signed by Defendants Musk and Ahuja. Directly referencing actual facts on the ground with respect to completion of the automated line meant to produce the Model 3, the Company stated that:

[P]reparations at our production facilities are on track to support the ramp of Model 3 production to 5,000 vehicles per week at some point in 2017, and to 10,000 vehicles per week at some point in 2018.

239. The foregoing was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that Tesla could not mass produce the Model 3 in 2017 because:

- Tesla executives had informed the Company that mass production of the Model 3 in 2017 was impossible;
- The automated production line in Fremont was not built, or close to completion, in May 2017;
- There was no automated production line at the Gigafactory, nor were automated lines close to completion;
- Tesla knew that in order to begin automated production in July, 2017, it needed 4-6 months to construct the automated lines, thus it needed to begin construction in the first quarter of 2017. Construction, however, did not even begin until the second quarter of 2017, and was then immediately beset with problems and delays, therefore automated production would not begin in July, 2017, and mass production could not be achieved, at the earliest, until months into 2018;

1 • Production equipment necessary to mass produce Model 3 batteries at the
2 Gigafactory was still in Germany;

3 • Preparations at the Fremont and Nevada production facilities were woefully
4 short of being “on track” to support mass production of the Model 3 in 2017, much less production
5 of 5,000 Model 3s a week at any time in 2017.

6 • The Individual Defendants were personally aware from eyewitness
7 observation of both the Fremont and Nevada facilities that the automated lines in Fremont and in
8 Nevada were not completed, or near completion, and that mass production of the Model 3 was not
9 possible in 2017, much less production of 5,000 Model 3s a week at any time in 2017, and that
10 Tesla could not achieve mass production until March 2018, at the earliest;

11 • During the Class Period there were no fully functioning automated lines to
12 produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully
13 functioning automated lines to produce sufficient batteries for mass production in the Gigafactory.

14 240. Later that same day, during the May 3, 2017 Conference Call, held after the close
15 of the market, Defendant Musk engaged in a colloquy with Deutsche Bank AG analyst Rod
16 Avraham Lache, as follows:

17 Lache: A couple remaining questions. Just one is, since the Model 3 is maybe
18 2 or 3 months away, could you just give us a sense of what some of the most
19 critical outstanding items are that are going to gate the commercial launch
20 timing? And now that there are actual physical test vehicles on the road, are
21 there any significant changes happening?

22 Musk: Well, actually it seems to be -- *we're not really seeing any significant*
23 *change that needs to occur* with Model 3. So it's coming in as expected, as
24 the design continuation has predicted, it's getting pretty close to the bull's-eye,
25 and *I'm not aware of anything that would affect our prior statements about*
26 *volume target*.

27
28 Lache: So there's nothing outstanding vis-à-vis tooling, deliveries or things
like that, that you're still viewing as a critical item with some uncertainty?

1 Musk: There's plenty of things with uncertainty, but *I don't know anything*
 2 *that would prevent us from starting firstly in July, and exceeding 5,000*
 3 *units per week by the end of the year.* There may be some cost up there, I just
 4 don't know of what that is today.

5 241. The foregoing statements were false and misleading because, as described in detail
 6 above, Defendants knew or were reckless in not knowing that Tesla could not mass produce the
 7 Model 3 in 2017 because:

8 • During the Class Period there were no fully functioning automated lines to
 9 produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully
 10 functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;

11 • Tesla executives had informed the Company that mass production of the
 12 Model 3 in 2017 was impossible;

13 • The automated production line in Fremont was not built, or close to
 14 completion, in May 2017;

15 • There was no automated production line at the Gigafactory, nor were
 16 automated lines close to completion;

17 • Tesla knew that in order to begin automated production in July, 2017, it
 18 needed 4-6 months to construct the automated lines, thus it needed to begin construction in the
 19 first quarter of 2017. Construction, however, did not even begin until the second quarter of 2017,
 20 and was then immediately beset with problems and delays, therefore automated production would
 21 not begin in July, 2017, and mass production could not be achieved, at the earliest, until March
 22 2018;

23 • Production equipment necessary to mass produce Model 3 batteries at the
 24 Gigafactory was still in Germany;

25 • Preparations at the Fremont and Nevada production facilities were woefully
 26 short of being “on track” to support mass production of the Model 3 in 2017, much less production
 27 of 5,000 Model 3s a week at any time in 2017;

28 • The Individual Defendants were personally aware from eyewitness
 observation of both the Fremont and Nevada facilities that the automated lines in Fremont and in

1 Nevada were not completed, or near completion, and that mass production of the Model 3 was not
 2 possible in 2017, much less production of 5,000 Model 3s a week at any time in 2017, therefore
 3 Defendants were indeed aware of “anything” that might prevent mass production of the Model 3
 4 in 2017.

5 242. On May 10, 2017, after the close of the market, Tesla filed a quarterly report on
 6 Form 10-Q with the SEC, announcing the Company’s financial and operating results for the quarter
 7 ended March 31, 2017 (the “first quarter 2017 10-Q”). The 10-Q was signed by Defendant Ahuja.

8 243. During the May 3, 2017 Conference Call, Musk, discussing Tesla’s actions with
 9 the Model 3 and comparing it to the Model X, stated:

10 X became kind of like a technology bandwagon of every cool thing you can imagine
 11 all at once. It's like everything all at once. That was a terrible strategy. You really
 12 want to start off simple and add things over time. But that was some hubris and real
 13 overconfident there. So with Model 3 it's the opposite. We've designed it to be easy
 14 to make. *We've got I think a much better supply chain in place where we've got*
 15 *the A team from the A suppliers. We didn't have that for the Model X or the S.*
 16 *And as far as we know, there are no issues.*

17 244. The foregoing statement was false and misleading because, as described in detail
 18 above, Defendants knew or were reckless in not knowing that Tesla could not mass produce the
 19 Model 3 at any time in 2017 because:

- 20 • Tesla did not have a supply chain in place at the start of the Class Period,
 21 so Defendants were aware of serious “issues” with suppliers. Contracts for all necessary suppliers
 22 had not been finalized;
- 23 • Parts necessary for constructing the automated production line in Fremont
 24 had not been delivered, and some would not arrive for months;
- 25 • Suppliers had informed Tesla that the production timelines were
 26 impossible;
- 27 • The automated production line in Fremont was not built, or close to
 28 completion, in May 2017;

- 1 • There was no automated production line at the Gigafactory, nor were
2 automated lines close to completion;
- 3 • Production equipment necessary to mass produce Model 3 batteries at the
4 Gigafactory was still in Germany;
- 5 • Preparations at the Fremont and Nevada production facilities were woefully
6 short of being on track to support mass production of the Model 3 in 2017, much less production
7 of 5,000 Model 3s a week at any time in 2017;
- 8 • The Individual Defendants were personally aware from eyewitness
9 observation of both the Fremont and Nevada facilities that the automated lines in Fremont and in
10 Nevada were not completed, or near completion, and that mass production of the Model 3 was not
11 possible in 2017, much less production of 5,000 Model 3s a week at any time in 2017, therefore
12 Defendants were aware of “anything” that might prevent mass production of the Model 3 in 2017.

13 245. In the first quarter 2017 10-Q, the Company stated, in relevant part:

14 In the first quarter of 2016, we unveiled Model 3, a lower priced sedan
15 designed for the mass market. Model 3 vehicle development is nearly
16 complete as we approach the start of initial production in July of this year.
17 Release candidate vehicles, built using production-intent tooling and
18 processes, are being tested to assess fit and finish, to support vehicle software
19 development and to ensure a smooth and predictable homologation process.
20 Road testing is also underway to refine driving dynamics and ensure vehicle
21 durability. *Simultaneously, preparations at our production facilities are*
22 *progressing to support the ramp of Model 3 production to 5,000 vehicles per*
23 *week at some point in* 2017 and to 10,000 vehicles per week at some point in
24 2018. We are working closely with all Model 3 suppliers to ensure their
25 readiness ahead of the start of production.

26 246. The foregoing was false and misleading because, as described in detail above,
27 Defendants knew or were reckless in not knowing that Tesla could not mass produce the Model 3
28 in 2017 because:

1 • Preparedness for mass production at both the Fremont and Nevada facilities
2 was non-existent. Fully functioning automated lines were not completed, or close to being
3 completed, and would not support mass production of Model 3s in 2017, much less production of
4 5,000 Model 3s a week at any time in 2017. All Model 3s were being constructed by hand in the
5 Fremont pilot shop;

6 • Defendants own Model 3 production plan mandated that construction of the
7 automated lines begin in the first quarter of 2017 in order to begin automated production in July,
8 2017, and mass produce the Model 3 in 2017. Automated line installation did not, however, begin
9 in the first quarter of 2017;

10 • The Individual Defendants were personally aware from eyewitness
11 observation of both the Fremont and Nevada facilities during the Class Period that there were no
12 fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in
13 Fremont for mass production, or fully functioning automated lines to produce sufficient batteries
14 for mass production in the Gigafactory, and that “preparations” were not “progressing”;

15 • Tesla did not have a supply chain in place at the start of the Class Period,
16 so Defendants were aware of serious problems with suppliers. Contracts for all necessary suppliers
17 had not been finalized;

18 • Parts necessary for constructing the automated production line in Fremont
19 had not been delivered, and some would not arrive for months;

20 • Suppliers had informed Tesla that the production timelines were
21 impossible;

22 • The automated production line in Fremont was not built, or close to
23 completion, in May 2017;

24 • There was no automated production line at the Gigafactory, nor were
25 automated lines close to completion;

26 • Production equipment necessary to mass produce Model 3 batteries at the
27 Gigafactory was still in Germany;
28

1 • “Preparations” at the Fremont and Nevada production facilities were
2 woefully short of being on track to support mass production of the Model 3 in 2017, much less
3 production of 5,000 Model 3s a week at any time in 2017.

4 247. In the first quarter 2017 10-Q, the Company stated, in relevant part:

5 “[i]n the first quarter of 2016, we announced our target to increase overall
6 vehicle production level to 500,000 vehicles in 2018. We have started the
7 installation of Model 3 manufacturing equipment at the Fremont Factory and
8 Gigafactory 1, and we are on-track for start of Model 3 production in July
9 2017.”

10 248. The foregoing was false and misleading because, as described in detail above,
11 Defendants knew or were reckless in not knowing that Tesla could not mass produce the Model 3
12 in 2017 because:

13 • Defendants knew that automated line installation did not begin in the first
14 quarter of 2017, thus, by their own production plan requiring at least 4-6 months for installation,
15 they knew that actual automated production would not begin in July, 2017, and therefore, as their
16 own plan required 6 months of “ramp-up” to reach mass production once automated production
17 began, mass production would not be achieved until, at earliest, March 2018. Therefore, no later
18 than May 1, 2017, Defendants knew or recklessly disregarded that Tesla was not “on-track” either
19 for start of automated production in July, 2017, for Model 3 mass production in 2017;

20 • The Individual Defendants were personally aware from eyewitness
21 observation of both the Fremont and Nevada facilities during the Class Period that installation of
22 the automated lines did not begin in the first quarter of 2017, and that Tesla was not “on-track”
23 either for start of automated production in July, 2017, or for Model 3 mass production in 2017,
24 and that Tesla could not achieve mass production until March 2018, at the earliest;

25 • Tesla did not have a supply chain in place at the start of the Class Period,
26 so Defendants were aware of serious problems with suppliers. Contracts for all necessary suppliers
27 had not been finalized;

28 • Parts necessary for constructing the automated production line in Fremont
had not been delivered, and some would not arrive for months;

- 1 • Suppliers had informed Tesla that the production timelines were
- 2 impossible;
- 3 • Production equipment necessary to mass produce Model 3 batteries at the
- 4 Gigafactory was still in Germany;
- 5 • “Preparations” at the Fremont and Nevada production facilities were
- 6 woefully short of being on track to support mass production of the Model 3 in 2017, much less
- 7 production of 5,000 Model 3s a week at any time in 2017.

8 249. The May 10, 2017, first quarter 2017 10-Q included the following “risk factor”:

9 *We may experience delays in realizing our projected*
 10 *timelines and cost and volume targets for the production, launch and*
 11 *ramp of our Model 3 vehicle, which could harm our business, prospects,*
 12 *financial condition and operating results.*

13 Our future business depends in large part on our ability to execute on our
 14 plans to develop, manufacture, market and sell the Model 3 vehicle, which we
 15 intend to offer at a lower price point and to produce at significantly higher
 16 volumes than our present production capabilities for the Model S or Model X
 17 vehicles. We unveiled a prototype of Model 3 in March 2016 and have
 18 announced our goal to achieve volume production and deliveries of this
 19 vehicle in the second half of 2017. (emphasis in original).

20 250. The foregoing risk disclosure was false and misleading because, as described in
 21 detail above, Defendants knew or were reckless in not knowing that events had already occurred
 22 that prevented Tesla from mass producing the Model 3 at any time on or around December 31,
 23 2017 because:

- 24 • Defendants knew or recklessly disregarded that this general risk factor had
- 25 already occurred, and that mass production of Model 3s would not and could not happen in 2017,
- 26 much less production of 5,000 Model 3s a week at any time in 2017. Defendants were duty bound,
- 27 but failed, to disclose that the specific adverse event the Company was warning of hypothetically
- 28 had already transpired, rendering the foregoing risk disclosures false and misleading;

1 • Defendants knew that automated line installation did not begin in the first
2 quarter of 2017, thus, by their own production plan requiring at least 4-6 months for installation,
3 they knew that actual automated production would not begin in July, 2017, and therefore, as their
4 own plan required 6 months of “ramp-up” to reach mass production once automated production
5 began, mass production would not be achieved in 2017. Therefore, Defendants knew that Tesla
6 was not “on-track” either for start of automated production in July, 2017, or for Model 3 mass
7 production in 2017;

8 • Preparedness for mass production at both the Fremont and Nevada facilities
9 was non-existent. Fully functioning automated lines were not completed, or close to being
10 completed, and would not support mass production of Model 3s in 2017, much less production of
11 5,000 Model 3s a week at any time in 2017. All Model 3s were being constructed by hand in the
12 Fremont pilot shop;

13 • The Individual Defendants were personally aware from eyewitness
14 observation of both the Fremont and Nevada facilities during the Class Period that there were no
15 fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in
16 Fremont for mass production, or fully functioning automated lines to produce sufficient batteries
17 for mass production in the Gigafactory, and that “preparations” were not “progressing”;

18 • Tesla did not have a supply chain in place at the start of the Class Period,
19 so Defendants were aware of serious problems with suppliers. Contracts for all necessary suppliers
20 had not been finalized;

21 • Parts necessary for constructing the automated production line in Fremont
22 had not been delivered, and some would not arrive for months;

23 • Suppliers had informed Tesla that the production timelines were
24 impossible;

25 • The automated production line in Fremont was not built, or even close to
26 completion, in May 2017;

27 • There was no automated production line at the Gigafactory, nor were
28 automated lines close to completion;

1 • Production equipment necessary to mass produce Model 3 batteries at the
2 Gigafactory was still in Germany;

3 • Preparations at the Fremont and Nevada production facilities were woefully
4 short of being on track to support mass production of the Model 3 in 2017, much less production
5 of 5,000 Model 3s a week at any time in 2017.

6 251. The first quarter 2017 10-Q included the following statement:

7 *Although we continue to remain on track with our progress at Gigafactory*

8 *1*, given the size and complexity of this undertaking, it is possible that future
9 events could result in the cost of building and operating Gigafactory 1
10 exceeding our current expectations and Gigafactory 1 taking longer to expand
11 than we currently anticipate. In addition, we continue to expand production
12 capacity at our Fremont Factory and are exploring additional production
13 capacity in Asia and Europe.

14 252. The foregoing statement was false and misleading because, as described in detail
15 above, Defendants knew or were reckless in not knowing that Tesla could not mass produce the
16 Model 3 at any time on or around December 31, 2017 because:

17 • During the Class Period there were no automated lines producing batteries
18 in the Gigafactory, much less process sufficient for mass production of batteries;

19 • Progress at the Nevada production facility was woefully short of being “on
20 track” to support mass production of the Model 3 in 2017, much less production of 5,000 Model
21 3s a week at any time in 2017;

22 • The Individual Defendants were personally aware from eyewitness
23 observation of the Nevada facility during the Class Period that there were fully functioning
24 automated lines to produce sufficient batteries for mass production in the Gigafactory, and that
25 “progress” was not “on track”;

26 • Tesla did not have a supply chain in place at the start of the Class Period,
27 so Defendants were aware of serious issues with suppliers. Contracts for all necessary suppliers
28 had not been finalized;

1 • Suppliers had informed Tesla that the production timelines were
2 impossible;
3 • Production equipment necessary to mass produce Model 3 batteries at the
4 Gigafactory was still in Germany.
5 • The warning that “it is possible that future events could result in the cost of
6 building and operating Gigafactory 1 exceeding our current expectations and Gigafactory 1 taking
7 longer to expand than we currently anticipate” was misleading because this event had already
8 occurred. The building and operating of the automated line at the Gigafactory 1 was already
9 delayed and plagued with serious problems preventing mass production of batteries for the Model
10 3.

11 253. Exhibit 31.1 to the first quarter 2017 10-Q was a Certification, signed by
12 Defendant Musk, which stated, in part:

13 I, Elon Musk, certify that: 1. I have reviewed this Quarterly Report on
14 Form 10-Q of Tesla, Inc.; 2. Based on my knowledge, this report does
15 not contain any untrue statement of material fact or omit to state a
16 material fact necessary to make the statements, in light of the
17 circumstances under which such statements were made, not
18 misleading with respect to the period covered by this report[.]

19 254. Exhibit 31.2 to the first quarter 2017 10-Q was a Certification, signed by
20 Defendant Ahuja, which stated, in part:

21 I, Deepak Ahuja, certify that: 1. I have reviewed this Quarterly Report on
22 Form 10-Q of Tesla, Inc.; 2. Based on my knowledge, this report does not
23 contain any untrue statement of material fact or omit to state a material fact
24 necessary to make the statements, in light of the circumstances under which
25 such statements were made, not misleading with respect to the period covered
26 by this report[.]

27 255. The preceding certifications were false and misleading because, as described in
28 detail above, Defendants knew or were reckless in not knowing that their statements in the filing

were false because Tesla could not mass produce the Model 3 at any time on or around December 31, 2017 because:

- During the Class Period there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;

- Preparations at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017;

- Defendants knew that automated line installation did not begin in the first quarter of 2017, thus, by their own production plan requiring at least 4-6 months for installation, they knew that actual automated production would not begin in July, 2017, and therefore, as their own plan required 6 months of “ramp-up” to reach mass production once automated production began, mass production would not be achieved in 2017. Therefore, Defendants knew that Tesla was not “on-track” either for start of automated production in July, 2017, or for Model 3 mass production in 2017, and that Tesla could not achieve mass production until March 2018, at the earliest;

- The general risk factor regarding delays in mass production of the Model 3 in 2017 had specifically materialized, mass production of Model 3s would not happen in 2017, much less production of 5,000 Model 3s a week at any time in 2017. Defendants were duty bound, but failed, to disclose that the hypothetical “risks” warned of had already occurred, rendering the foregoing risk disclosures meaningless.

256. During the July 28, 2017 “handover” event, televised online, where Tesla “handed over” the first 30 Model 3s to buyers, Defendant Musk stated that “there’s actually a total of 50 production cars that we made this month....”

257. The foregoing was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that:

- The 50 Model 3s at the handover event were not “production cars,” *i.e.*, identical cars built on an automated line, but rather were built by hand, and the batteries in all 50 Model 3s were also built by hand;

- Contrary to Musk’s clear statement by using the term “production cars” at the handover event, automated production of Model 3s had not yet begun, thus Tesla had missed its own July, 2017 production plan for beginning automated production of the Model 3, and would not be able to mass produce the Model 3 in 2017, and could not achieve mass production until March 2018, at the earliest;
- During the Class Period there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;
- Preparations at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017.

258. On August 2, 2017, after the close of the market, Tesla filed “Tesla Second Quarter 2017 Update” as Exhibit 99.1 to an 8-K. The document was signed by Defendants Musk and Ahuja. Directly referencing actual facts on the ground with respect to completion of the automated line meant to produce Model 3, the Company stated, based on current production line advancement, that:

Based on our preparedness at this time, we are confident we can produce just over 1,500 vehicles in Q3, and achieve a run rate of 5,000 vehicles per week by the end of 2017.

259. The foregoing statement was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that Tesla was unable to mass produce the Model 3 either in the third quarter or at any time on or around December 31, 2017 because:

- During the Class Period there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;
- The level of “preparedness” at the Fremont and Nevada production facilities was woefully short of being “on track” to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017;

1 • The Individual Defendants were personally aware from eyewitness
2 observation of both the Fremont and Nevada facilities during the Class Period that there were no
3 fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in
4 Fremont for mass production, or fully functioning automated lines to produce sufficient batteries
5 for mass production in the Gigafactory, and that “preparations” were not “progressing”;

6 • Tesla did not have a supply chain in place at the start of the Class Period,
7 so Defendants were aware of serious issues with suppliers. Contracts for all necessary suppliers
8 had not been finalized;

9 • Parts necessary for constructing the automated production line in Fremont
10 had not been delivered, and some would not arrive for months;

11 • Suppliers had informed Tesla that the production timelines were
12 impossible;

13 • The automated production line in Fremont was not close to completion, in
14 August 2017;

15 • There was no automated production lines at the Gigafactory;

16 • Production equipment necessary to mass produce Model 3 batteries at the
17 Gigafactory was still in Germany;

18 • Preparations at the Fremont and Nevada production facilities were woefully
19 short of being on track to support mass production of the Model 3 in 2017, much less production
20 of 5,000 Model 3s a week at any time in 2017.

21 260. Later that same day, during the August 2, 2017 Conference Call, held after the close
22 of the market, Defendant Musk, in prepared remarks, stated that:

23 *And we remain – we believe on track to achieve a 5,000 unit week by the*
24 *end of this year.*

25 So, I would certainly urge people not to get too caught up in what exactly falls
26 within the exact calendar boundaries of a quarter, one quarter over the next,
27 because when you have an exponentially growing production ramp, slight
28 changes of a few weeks here or there can appear to have dramatic changes,

1 but that is simply because of the arbitrary nature of when a quarter ends.

2

3 And then we – with Model 3, even more vertically integrated. I think people
4 should really not have any concerns that we will reach that outcome [10,000
5 cars per week by the end of 2018] from a production rate.

6 261. The foregoing statement was false and misleading because Defendants knew or
7 were reckless in not knowing that Tesla was not “on track” to mass produce the Model 3 at any
8 date on or near December 31, 2017 because:

9 • During the Class Period there were no fully functioning automated lines to
10 produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully
11 functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;

12 • Preparations at the Fremont and Nevada production facilities were woefully
13 short of being “on track” to support mass production of the Model 3 in 2017, much less production
14 of 5,000 Model 3s a week at any time in 2017;

15 • The Individual Defendants were personally aware from eyewitness
16 observation of both the Fremont and Nevada facilities during the Class Period that there were no
17 fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in
18 Fremont for mass production, or fully functioning automated lines to produce sufficient batteries
19 for mass production in the Gigafactory;

20 • Tesla executives had informed the Company that mass production of the
21 Model 3 in 2017 was impossible;

22 • The automated production line in Fremont was not close to completion in
23 August 2017;

24 • There was no automated production line at the Gigafactory;

25 • Production equipment necessary to mass produce Model 3 batteries at the
26 Gigafactory was still in Germany; the Individual Defendants were personally aware from
27 eyewitness observation of both the Fremont and Nevada facilities that the automated lines in
28 Fremont and in Nevada were not completed, or near completion, and that mass production of the

1 Model 3 was not possible in 2017, much less production of 5,000 Model 3s a week at any time in
2 2017, and Tesla could not achieve mass production until March 2018, at the earliest.

3 262. During the August 2, 2017 earnings conference call, again in prepared remarks,
4 Defendant Musk stated that “[a]nd then batteries – also making great progress on the battery
5 front.”

6 263. The foregoing statement was false and misleading because, as described in detail
7 above, Defendants knew or were reckless in not knowing that the Gigafactory was unable to mass
8 produce and deliver Model 3 batteries to Fremont on or around December 31, 2017 because:

9 • During the Class Period there were no functioning automated production
10 lines at the Gigafactory, much less production lines sufficient to mass produce batteries, and only
11 a handful of Model 3 batteries were being produced each week;

12 • Defendants were personally aware from eyewitness observation of the
13 Gigafactory facility during the Class Period that there were no fully functioning automated lines
14 to produce sufficient batteries for mass production in the Gigafactory;

15 • Tesla executives had informed the Company that mass production of the
16 Model 3 in 2017 was not feasible;

17 • There was no automated production line at the Gigafactory;

18 • Production equipment necessary to mass produce Model 3 batteries at the
19 Gigafactory was still in Germany.

20 264. During the August 2, 2017 Conference Call, analyst David Tamberrino of Goldman
21 Sachs & Co. LLC asked:

22 Okay. Then I guess my follow-up question will just be on your 3Q gross
23 margin guidance of a dip below 20%. How far below – to phrase correctly,
24 how dependent upon production and hitting an S-curve or ramping up do you
25 think that below 20% is? Could it be a couple hundred basis points below
26 20%, or is it just think you’re going to be around that area based on what the
27 curve that you’ve laid out so far is going to look like?

28 Defendant Musk responded with the following claim about current production on the
automated line, stating:

1 Yes. This is just because of Model 3 is fundamentally negative gross margin
 2 in the very beginning. Because you got a gigantic machine producing – that’s
 3 meant for 5,000 vehicles a week *and it’s producing a few hundred vehicles*
 4 *a week.*

5 265. Defendant Musk’s preceding statements were materially false and misleading
 6 because, as described in detail above, Defendants knew or were reckless in not knowing that Tesla
 7 could not mass produce the Model 3 at any time on or around December 31, 2017 because:

8 • No automated line, or “gigantic machine,” was “producing a few hundred
 9 vehicles a week in the Fremont facility. The automated production line for the Model 3 in Fremont
 10 was not yet functioning. The Company only produced 260 Model 3s during the entire third quarter
 11 of 2017, an average of fewer than 3 Model 3s per day;

12 • As of August 2, 2017, Model 3s were still being produced by hand in the
 13 pilot shop in Fremont;

14 • Defendants were personally aware from eyewitness observation of the
 15 Fremont facility during the Class Period that there were no fully functioning automated lines to
 16 produce hundreds of Model 3s per week, and that such production was not occurring.

17 266. On August 4, 2017, after the market closed, Tesla filed with the SEC a 10-Q for the
 18 quarter ended June 30, 2017. The 10-Q was signed by Defendant Ahuja. The filing included the
 19 following risk factor:

20 *We may experience delays in realizing our projected*
 21 *timelines and cost and volume targets for the production, launch and*
 22 *ramp of our Model 3 vehicle, which could harm our business, prospects,*
 23 *financial condition and operating results.*

24 Our future business depends in large part on our ability to execute on our
 25 plans to manufacture, market and sell the Model 3 vehicle, which we intend
 26 to offer at a lower price point and to produce at significantly higher volumes
 27 than our present production capabilities for the Model S or Model X vehicles.

28 We commenced production and initial customer deliveries of Model 3 in July
 2017 and have announced our goal to increase Model 3 vehicle production to

1 5,000 vehicles per week by the end of 2017 and 10,000 vehicles per week at
2 some point in 2018.

3 (emphasis in original).

4 267. The preceding risk disclosure was false and misleading because, as described in
5 detail above, Defendants knew or recklessly disregarded that:

6 • The adverse event warned of hypothetically in this general risk factor had
7 already occurred, and mass production of Model 3s would not happen in 2017, much less
8 production of 5,000 Model 3s a week at any time in 2017. Defendants were duty bound, but failed,
9 to disclose the true state of affairs, rendering the foregoing risk disclosure meaningless.

10 • Preparedness for mass production at both the Fremont and Nevada facilities
11 was non-existent. Fully functioning automated lines were not completed, or close to being
12 completed, and would not support mass production of Model 3s in 2017, much less production of
13 5,000 Model 3s a week at any time in 2017. All Model 3s were being constructed by hand in the
14 Fremont pilot shop;

15 • The Individual Defendants were personally aware from eyewitness
16 observation of both the Fremont and Nevada facilities during the Class Period that there were no
17 fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in
18 Fremont for mass production, or fully functioning automated lines to produce sufficient batteries
19 for mass production in the Gigafactory, and that preparations were not progressing;

20 • Tesla did not have a supply chain in place at the start of the Class Period,
21 so Defendants were aware of serious issues with suppliers. Contracts for all necessary suppliers
22 had not been finalized;

23 • Parts necessary for constructing the automated production line in Fremont
24 had not been delivered, and some would not arrive for months;

25 • Suppliers had informed Tesla that the production timelines were
26 impossible;

27 • Production equipment necessary to mass produce Model 3 batteries at the
28 Gigafactory was still in Germany;

• Preparations at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017.

268. In the same August 4, 2017, second quarter 2017 10-Q, with respect to current progress at the Gigafactory in Nevada, the Company stated that:

While we currently believe that our progress at Gigafactory 1 will allow us to reach our production targets, our ultimate ability to do so will require us to resolve the types of challenges that are typical of a production ramp, such as those that we have experienced to date, including at Gigafactory 1.

269. The preceding statement was false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that they would fail to reach their production target of mass production of the Model 3 on or around December 31, 2017 because:

- During the Class Period there were no automated lines producing sufficient numbers of Model 3 batteries for mass production in the Gigafactory;
- “Progress” at the Nevada production facility was virtually nonexistent, and only a handful of Model 3 batteries were being produced each week. Preparations were woefully short of being “on track” to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017;
- Defendants were personally aware from eyewitness observation of the Gigafactory facility during the Class Period that there were no fully functioning automated lines to produce hundreds of Model 3 batteries per week, and that such production was not occurring;
- Only a handful of Model 3 batteries were being produced each week;
- Defendants were personally aware from eyewitness observation of the Gigafactory facility during the Class Period that there were no fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;
- Tesla executives had informed the Company that mass production of the Model 3 in 2017 was not feasible;
- Production equipment necessary to mass produce Model 3 batteries at the Gigafactory was still in Germany.

1 270. The second quarter 2017 10-Q contained the following “risk factor” with respect to
2 battery production at the Gigafactory:

3 To lower the cost of cell production and produce cells in high volume, we are
4 integrating the production of lithium-ion cells and finished battery packs for
5 the Model 3 and energy storage products at Gigafactory 1. While Gigafactory
6 1 began producing lithium-ion cells for energy storage products in January
7 2017 and has since begun producing lithium-ion cells for Model 3, we have
8 no other direct experience in the production of lithium-ion cells. Given the
9 size and complexity of this undertaking, it is possible that future events could
10 result in the cost of expanding and operating Gigafactory 1 exceeding our
11 current expectations and Gigafactory 1 taking longer to ramp production and
12 expand than we currently anticipate. In order to reach our planned volume
13 and gross margin for Model 3, we must have significant cell production from
14 Gigafactory 1, which, among other things, requires Panasonic to successfully
15 ramp its all-new cell production lines to significant volumes over a short
16 period of time. Although Panasonic has a long track record of producing high-
17 quality cells at significant volume at its factories in Japan, it has never before
18 started and ramped cell production at a factory in the U.S. like at Gigafactory
19 1. We are now in the early stages of production and have experienced the
20 types of challenges that typically come with a production ramp. We expect
21 that we will continue to experience challenges as we move through the ramp,
22 and we will continue to fine-tune our manufacturing lines to address
23 them. ***While we currently believe that we will reach our production targets,***
24 ***if we are unable to resolve ramping challenges and expand Gigafactory***
25 ***1 production in a timely manner and at reasonable prices, and if***
26 ***we or Panasonic are unable to attract, hire and retain a substantial number of***
27 ***highly skilled personnel, our ability to supply battery packs to our vehicles,***
28 ***especially Model 3, and other products could be negatively impacted. Any***
such problems or delays with Gigafactory 1 could negatively affect our brand

1 and harm our business, prospects, financial condition and operating results.

2 271. The preceding risk disclosure was false and misleading because, as described in
3 detail above, Defendants knew or were reckless in not knowing that they would fail to reach their
4 production target of mass production of the Model 3 on or around December 31, 2017 because:

5 • The adverse event warned of hypothetically in this general risk factor had
6 already occurred, and mass production of the Model 3 would not happen in 2017, much less reach
7 the production target of 5,000 Model 3s a week in 2017. As Defendants were eyewitnesses to the
8 failure of mass production at the Gigafactory, Defendants were duty bound, but failed, to disclose
9 the specific risk to the Company, rendering the foregoing risk disclosure meaningless;

10 • Preparedness for mass production at both the Fremont and Nevada facilities
11 was non-existent. Fully functioning automated lines were not completed, or close to being
12 completed, and would not support mass production of Model 3s in 2017, much less production of
13 5,000 Model 3s a week at any time in 2017. All Model 3s were being constructed by hand in the
14 Fremont pilot shop;

15 • The Individual Defendants were personally aware from eyewitness
16 observation of both the Fremont and Nevada facilities during the Class Period that there were no
17 fully functioning automated lines to produce sufficient numbers of Model 3 car bodies in Fremont
18 for mass production, or fully functioning automated lines to produce sufficient batteries for mass
19 production in the Gigafactory, and that “preparations” were not “progressing”;

20 • Tesla did not have a supply chain in place at the start of the Class Period,
21 so Defendants were aware of serious issues with suppliers. Contracts for all necessary suppliers
22 had not been finalized;

23 • Parts necessary for constructing the automated production line in Fremont
24 had not been delivered, and some would not arrive for months;

25 • Suppliers had informed Tesla that the production timelines were
26 impossible;

27 • Production equipment necessary to mass produce Model 3 batteries at the
28 Gigafactory was still in Germany;

• Preparations at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017.

272. Exhibit 31.1 to the second quarter 2017 10-Q was a Certification, signed by Defendant Musk, which stated, in part:

I, Elon Musk, certify that: 1. I have reviewed this Quarterly Report on Form 10-Q of Tesla, Inc.; 2. Based on my knowledge, this report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report[.]

273. Exhibit 31.2 to the second quarter 2017 10-Q was a Certification, signed by Defendant Ahuja, which stated, in part:

I, Deepak Ahuja, certify that: 1. I have reviewed this Quarterly Report on Form 10-Q of Tesla, Inc.; 2. Based on my knowledge, this report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report[.]

274. The preceding certifications were false and misleading because, as described in detail above, Defendants knew or were reckless in not knowing that their statements in the filing were false because Tesla could not mass produce the Model 3 at any time on or around December 31, 2017 because:

• During the Class Period there were no fully functioning automated lines to produce the sufficient numbers of Model 3 car bodies in Fremont for mass production, or fully functioning automated lines to produce sufficient batteries for mass production in the Gigafactory;

• Preparations at the Fremont and Nevada production facilities were woefully short of being on track to support mass production of the Model 3 in 2017, much less production of 5,000 Model 3s a week at any time in 2017;

1 the cars in a special area while the company feverishly worked to finish the
2 machinery designed to produce Model 3's at a rate of thousands a week, the
3 people said.

4 Automotive experts say it is unusual to be building large parts of a car by
5 hand during production. "That's not how mass production vehicles are
6 made," said Dennis Virag, a manufacturing consultant who has worked in the
7 automotive industry for 40 years. "That's horse-and-carriage type
8 manufacturing. That's not today's automotive world."

9 ***

10 Behind the scenes, Tesla had fallen weeks behind in finishing the
11 manufacturing systems to build the vehicle, the people said.

12
13 The extent of the problem came to light on Monday when Tesla said it made
14 only 260 Model 3s during the third quarter—averaging three cars a day. The
15 company cited production bottlenecks but didn't explain much further.

16 ***

17 It isn't uncommon for much larger auto makers to hand build pre-production
18 versions of a car prior to the sales launch, but those are typically reserved for
19 employees and others willing to test the cars and return them to the company.
20 By the time a car goes on sale, the body shop is typically fully automated.
21 Inside the Fremont factory, workers said equipment for the so-called body-
22 in-white line for the Model 3, where the car body's sheet metal is welded
23 together, wasn't installed until by around September. They guessed at least
24 another month of work remained to calibrate the tools.

25
26 One worker who spent time in the Model 3 shop—dubbed by some as Area
27 51 because of the limited access and secretive nature—described watching
28 young workers in September struggling to move large pieces of steel to weld
together instead of using robots as is traditionally the case.

1 “In place of the robots...you’ve got two associates lining up with a big, old
2 spot welder hanging from the ceiling by a chain, and you’ve got one associate
3 kind of like balancing it and trying to get the welder in position, and you’ve
4 got another welder with his arm guiding it,” this worker recalled seeing.

5 “Sparks go flying.”

6 277. As a result of this news, Tesla’s share price fell \$13.94, or 3.91%, to close at
7 \$342.94 on October 9, 2017, damaging investors.

8 278. On November 1, 2017, after market close, Tesla filed with the SEC an 8-K reporting
9 the results of operations of the Third Quarter of 2017. Attached as Exhibit 99-1 to the 8-K was
10 “Tesla Third Quarter 2017 Update.” Tesla revealed in Exhibit 99-1 that production bottlenecks at
11 its Gigafactory facility in Nevada caused by the complexity of “the battery module assembly line
12 at Gigafactory 1, where cells are packaged into modules....,” had prevented Tesla from reaching
13 its mass production goals for the Model 3. Tesla further stated that it was redirecting its “best
14 engineering talent” to the Gigafactory to attempt to remove the production bottlenecks. Tesla
15 further moved out its production of 5,000 Model 3s per week to the end of the first quarter of 2018.

16 279. On November 2, 2017, at approximately 12 p.m. EST, the car blog Jalopnik
17 published an article entitled “Tesla’s ‘Hell’ Threatens its Future.”⁵⁰ The article confirmed many
18 of the statements of the former employees cited herein, including that: (a) as of mid-October, some
19 suppliers had not yet received production approval for their tooling, (b) the Model 3 assembly line
20 was not in operation as of October 2017, causing the Company to dial back Model 3 parts orders
21 by 40%, (c) witnesses confirmed that the Model 3 was being built by hand as of October 2017, (d)
22 witnesses further confirmed that Model 3s were being built in an area separate from the area
23 containing the automated production line, (e) witnesses who walked through the Fremont facility
24 stated that the fact that the automated production line is not functioning as planned is “plainly
25 obvious if you see the Model 3 area of the Fremont plant,” and (f) an ex-employee who had
26 recently left Tesla stated with respect to the Model 3 production line in Fremont “as far as being
27 able to push a car through there, automated, hell no.”

28

⁵⁰ <https://jalopnik.com/teslas-hell-threatens-its-future-1819917980>.

280. As a result of Tesla's November 1, 2017 8-K and the Jalopnik article entitled "Tesla's 'Hell' Threatens its Future," Tesla's share price fell \$21.82, or 6.8%, to close at \$299.26 on November 2, 2017, damaging investors.

281. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's common shares, Plaintiffs and other Class members have suffered significant losses and damages.

Further Post-Class Period Events

282. In an 8-K Defendants filed with the SEC on February 9, 2018, Tesla "clarif[ied]" Defendant Musk's statement made during an earnings conference call two days earlier, on February 7, 2018, concerning battery production capacity at the Gigafactory *in February 2018*:

Tesla, Inc. is clarifying the following statement made by Elon Musk, Tesla's Chief Executive Officer, during Tesla's fourth quarter and full year 2017 financial results conference call held on February 7, 2018:

"[We] expect the new automated lines to arrive next month in March. And then it's already working in Germany so that's going to be disassembled, brought out to the Gigafactory and reassembled and then go into operation at the Gigafactory. It's not a question whether it works or not. It's just a question of disassembly, transport and reassembly. So we expect to alleviate that constraint. With alleviating that constraint, that's what gets us to the roughly 2,000 to 2,500 unit per week production rate."

The "2,000 to 2,500" units per week cited in this comment refers solely to the capacity of the additional automated battery module manufacturing equipment that is currently located in Germany, and not to Tesla's total Model 3 production run rate or to the capacity of the automated battery module equipment that is already present at Gigafactory 1. Tesla's ability to meet its target of 2,500 per week by end of Q1 2018 is not dependent on the additional equipment that is currently located in Germany, as that equipment is expected to start ramping production during Q2 2018. With respect to battery module production, Tesla's ability to meet its target

1 of 2,500 per week by end of Q1 2018 is dependent only on the equipment that is
2 already present at Gigafactory 1, as well as the incremental capacity that is currently
3 being added through the semi-automated lines that were also discussed during the
4 conference call.

5 283. With this filing Tesla admitted that mass production of Model 3 batteries in the
6 Gigafactory had never been a possibility in 2017.

7 284. Subsequent to the Class Period, Tesla again moved back its production deadline of
8 5,000 Model 3s per week to the end of the second quarter of 2018. Tesla stated that it would
9 produce 2,500 Model 3's per week by the end of the first quarter of 2018.

10 285. Bloomberg calculates how many Model 3s are produced per week, as Tesla, unlike
11 almost every author carmaker, releases such figures after every financial quarter, rather than each
12 month. As of September 28, 2018, Tesla is producing approximately 2,266 Model 3s per week.⁵¹

13 286. Jalopnik published an article on January 25, 2018, entitled "Tesla's Making Model
14 3 Batteries by Hand Amid More Gigafactory Problems: Report."⁵² The article confirmed
15 statements from Former Employees cited herein, including that (a) Tesla was making batteries by
16 hand as late as December 2017, and (b) Tesla is "not close to mass-producing batteries for the
17 basic \$35,000 model of this electric sedan."

18 287. On March 14, 2018, CNBC reported that Tesla's own employees were reporting
19 that the Company is manufacturing a high ratio of flawed parts and Model 3 vehicles requiring
20 rework and repair.⁵³ According to a Tesla engineer, approximately 40% of parts made or received
21 in Fremont require rework, contributing to delays.

22 288. On March 27, 2018, Moody's announced that it was downgrading Tesla's credit
23 rating.
24
25

26
27 ⁵¹ See <https://www.bloomberg.com/graphics/2018-tesla-tracker/>.

28 ⁵² See <https://jalopnik.com/teslas-making-model-3-batteries-by-hand-amid-more-gigaf-1822426440>.

⁵³ See <https://www.cnbc.com/2018/03/14/tesla-manufacturing-high-volume-of-flawed-parts-employees.html>.

289. On September 27, 2018, the SEC filed a Complaint charging Elon Musk with repeatedly lying to investors on August 7, 2018 about a plan to take Tesla private.⁵⁴ The SEC minced no words, charging that “Musk’s statements were premised on a long series of baseless assumptions and were contrary to facts that Musk knew.” *SEC v. Musk*, at ¶69. Not only has the SEC alleged that Musk’s lies harmed investors, but in one instance Musk told a specific lie because he thought “his girlfriend would find it funny.” *Id.* at ¶24. On August 24, 2018, Musk “corrected his multiple previous misstatements,” *id.* at ¶59, causing Tesla’s stock price to plummet. *Id.* at 60. The SEC is seeking to bar Musk from serving as the CEO or as a board member of any publicly traded company.

PLAINTIFFS’ CLASS ACTION ALLEGATIONS

290. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Tesla common shares traded on the NASDAQ during the Class Period (the “Class”); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

291. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Tesla common shares were actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiffs at this time and can be ascertained only through appropriate discovery, Plaintiffs believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Tesla or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

⁵⁴ *U.S. SEC v. Musk*, No. 1:18-cv-8865 (S.D.N.Y. 2018).

1 292. Plaintiffs' claims are typical of the claims of the members of the Class as all
 2 members of the Class are similarly affected by Defendants' wrongful conduct in violation of
 3 federal law that is complained of herein.

4 293. Plaintiffs will fairly and adequately protect the interests of the members of the Class
 5 and has retained counsel competent and experienced in class and securities litigation. Plaintiffs
 6 have no interests antagonistic to or in conflict with those of the Class.

7 294. Common questions of law and fact exist as to all members of the Class and
 8 predominate over any questions solely affecting individual members of the Class. Among the
 9 questions of law and fact common to the Class are:

- 10 • whether the federal securities laws were violated by Defendants' acts as
 11 alleged herein;
- 12 • whether statements made by Defendants to the investing public during the
 13 Class Period misrepresented material facts about the financial condition,
 14 business, operations, and management of Tesla;
- 15 • whether Defendants caused Tesla to issue false and misleading financial
 16 statements during the Class Period;
- 17 • whether Defendants acted knowingly or recklessly in issuing false and
 18 misleading financial statements;
- 19 • whether the prices of Tesla securities during the Class Period were
 20 artificially inflated because of Defendants' conduct complained of herein;
 21 and
- 22 • whether the members of the Class have sustained damages and, if so, what
 23 is the proper measure of damages.

24 295. A class action is superior to all other available methods for the fair and efficient
 25 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
 26 damages suffered by individual Class members may be relatively small, the expense and burden
 27 of individual litigation make it impossible for members of the Class to individually redress the
 28 wrongs done to them. There will be no difficulty in the management of this action as a class action.

1 296. Plaintiffs will rely, in part, upon the presumption of reliance established by the
2 fraud-on-the-market doctrine in that:

- 3 • Defendants made public misrepresentations or failed to disclose material
- 4 facts during the Class Period;
- 5 • the omissions and misrepresentations were material;
- 6 • Tesla common shares are traded in efficient markets;
- 7 • the Company's shares were liquid and traded with moderate to heavy
- 8 volume during the Class Period;
- 9 • the Company traded on the NASDAQ, and was covered by multiple
- 10 analysts;
- 11 • the misrepresentations and omissions alleged would tend to induce a
- 12 reasonable investor to misjudge the value of the Company's common
- 13 shares; and
- 14 • Plaintiffs and members of the Class purchased and/or sold Tesla common
- 15 shares between the time the Defendants failed to disclose or misrepresented
- 16 material facts and the time the true facts were disclosed, without knowledge
- 17 of the omitted or misrepresented facts.

18 297. At all relevant times, the market for Tesla's securities was an efficient market for
19 the following reasons, among others:

- 20 • Tesla's stock met the requirements for listing, and was listed and actively
- 21 traded on the NASDAQ, a highly efficient and automated market;
- 22 • As a regulated issuer in U.S., Tesla filed periodic public reports with the
- 23 SEC;
- 24 • Tesla regularly communicated with public investors via established market
- 25 communication mechanisms, including through regular dissemination of
- 26 press releases on the national circuits of major newswire services and
- 27 through other wide-ranging public disclosures, such as communications
- 28 with the financial press and other similar reporting services;

- Tesla was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace. Analysts covering Tesla included, without limitation, Jefferies, Barclays, Morgan Stanley, Morningstar, Inc., Guggenheim Securities, Goldman Sachs, J.P. Morgan, Oppenheimer & Co., and UBS;
- The price of Tesla's stock reacted to the release of new, material, company-specific information;
- At the beginning of the Class Period, Tesla's market capitalization or the total value of all outstanding shares was approximately \$51.07 billion;
- As of May 2, 2017, just before the Class Period, Tesla reported shares outstanding of approximately 164 million shares. As of May 3, 2017, the beginning of the Class Period, Tesla's equity float, or the number of shares outstanding less shares held by insiders and affiliated corporate entities, was approximately 111 million shares;
- Tesla had 44 market makers during the Class Period;
- During the Class Period, Tesla was entitled to file S-3 Registration Statements in connection with public offerings, and did in fact file an S-3 Registration Statement on November 7, 2017.

298. Based upon the foregoing, the market for Tesla's securities promptly digested current information regarding Tesla from all publicly available sources and reflected such information in Tesla's stock price. Under these circumstances, all purchasers of Tesla's securities during the Class Period suffered similar injury through their purchase of Tesla's securities at artificially inflated prices and Plaintiffs and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

299. Alternatively, Plaintiffs and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material

information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

COUNT I

Violation of Section 10(b) of The Exchange Act and Rule 10b-5 Against All Defendants

300. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

301. This Count is asserted against Tesla and the Individual Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

302. During the Class Period, Tesla and the Individual Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

303. Tesla and the Individual Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiffs and others similarly situated in connection with their purchases of Tesla common shares during the Class Period.

304. Tesla and the Individual Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of Tesla were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the securities laws. These Defendants by virtue of their receipt of information reflecting the true facts of Tesla, their control

1 over, and/or receipt and/or modification of Tesla allegedly materially misleading statements,
2 and/or their associations with the Company which made them privy to confidential proprietary
3 information concerning Tesla, participated in the fraudulent scheme alleged herein.

4 305. Individual Defendants, who are the senior officers and/or directors of the Company,
5 had actual knowledge of the material omissions and/or the falsity of the material statements set
6 forth above, and intended to deceive Plaintiffs and the other members of the Class, or, in the
7 alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose
8 the true facts in the statements made by them or other Tesla personnel to members of the investing
9 public, including Plaintiffs and the Class.

10 306. As a result of the foregoing, the market price of Tesla common shares was
11 artificially inflated during the Class Period. In ignorance of the falsity of Tesla's and the Individual
12 Defendants' statements, Plaintiffs and the other members of the Class relied on the statements
13 described above and/or the integrity of the market price of Tesla common shares during the Class
14 Period in purchasing Tesla common shares at prices that were artificially inflated as a result of
15 Tesla's and the Individual Defendants' false and misleading statements.

16 307. Had Plaintiffs and the other members of the Class been aware that the market price
17 of Tesla common shares had been artificially and falsely inflated by Tesla's and the Individual
18 Defendants' misleading statements and by the material adverse information which Tesla's and the
19 Individual Defendants did not disclose, they would not have purchased Tesla's common shares at
20 the artificially inflated prices that they did, or at all.

21 308. As a result of the wrongful conduct alleged herein, Plaintiffs and other members of
22 the Class have suffered damages in an amount to be established at trial.

23 309. By reason of the foregoing, Tesla and the Individual Defendants have violated
24 Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the
25 plaintiffs and the other members of the Class for substantial damages which they suffered in
26 connection with their purchase of Tesla common shares during the Class Period.

COUNT II**Violation of Section 20(a) of The Exchange Act Against The Individual Defendants**

310. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

311. During the Class Period, the Individual Defendants participated in the operation and management of Tesla, and conducted and participated, directly and indirectly, in the conduct of Tesla's business affairs. Because of their senior positions, they knew the adverse non-public information regarding the Company's inadequate internal safeguards in data security protocols.

312. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Tesla's financial condition and results of operations, and to correct promptly any public statements issued by Tesla which had become materially false or misleading.

313. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Tesla disseminated in the marketplace during the Class Period. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Tesla to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of Tesla within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Tesla common shares.

314. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Tesla.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Lead Plaintiff as the Class representative;

B. Requiring Defendants to pay damages sustained by Plaintiffs and the Class by reason of the acts and transactions alleged herein;

C. Awarding Plaintiffs and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

D. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury.

Dated: September 28, 2018

Respectfully submitted,

THE ROSEN LAW FIRM, P.A.

By: /s/ Laurence M. Rosen
Laurence M. Rosen, Esq. (SBN 219683)
355 S. Grand Avenue, Suite 2450
Los Angeles, CA 90071
Telephone: (213) 785-2610
Facsimile: (213) 226-4684
Email: lrosen@rosenlegal.com

Jacob A. Goldberg, Esq.
Gonen Haklay, Esq.
101 Greenwood Avenue, Suite 440
Jenkintown, PA 19046
Telephone: (215) 600-2817
Facsimile: (212) 202-3827
Email: jgoldberg@rosenlegal.com
ghaklay@rosenlegal.com

Lead Counsel for Plaintiffs and the Class

POMERANTZ LLP

Jeremy A. Lieberman
J. Alexander Hood
600 Third Avenue, 20th Floor
New York, NY 10016
Telephone: (212) 661-1100

Facsimile: (212) 661-8665
Email: jalieberman@pomlaw.com
ahood@pomlaw.com

POMERANTZ LLP

Patrick V. Dahlstrom
Louis C. Ludwig
10 South LaSalle Street
Chicago, IL 60603
Telephone: (312) 377-1181
Email: pdahlstrom@pomlaw.com
lcludwig@pomlaw.com

Additional Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2018, I caused a true and correct copy of the foregoing **SECOND AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS**, to be served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/ Laurence M. Rosen